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OF THE

SOCIETY OF COMPARATIVE LEGISLATION.

EDITED FOR THE SOCIETY BY

SIR JOHN MACDONELL, C.B., LL.D.,

AND

EDWARD MANSON, Esq.

"Δεῖ καὶ τὰς ἄλλας ἐπισκέψασθαι πολιτείας . . . ἵνα τό τ'ὀρθῶς ἔχον ὀφθῃ καὶ τὸ χρήσιμον."—Arist. *Pol.* II. 1.

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DAVID JOSIAH BREWER,

Associate Justice of the Supreme Court of the United States.

[*Contributed by* R. NEWTON CRANE, ESQ., *of the Middle Temple.*]

THE career of Mr. Justice Brewer conspicuously illustrates the great divergence which exists between the English and the American method of recruiting the judicial bench. While in this country, as a rule, advocates of long experience at the Bar are appointed to fill vacancies in the judiciary, in America all judges, except those of the Federal Courts and of one or two of the State Courts, are elected for a limited term by popular suffrage. In these circumstances the leaders of the Bar naturally find no inducement to relinquish a lucrative practice for the meagre salaries of the judiciary, or no sufficient compensation in the honour of the position for the worry and indignities which attend contested elections. Younger men, therefore, and those who have had only a brief experience at the Bar, or who have been connected with the Courts in a clerical or executive capacity, find admission to the bench. Fortunately experience proves that this practice is attended by better results than might be expected. Those who are incompetent go back to the Bar after their brief term of office is over, while those who are fitted by learning and temperament for a judicial career adopt it as a vocation, and in recognition of their fitness and adaptability the people again and again elect them to succeed themselves, or they are promoted to superior judicial positions. The Federal Bench, to which the judges are appointed for life by the President, has for years been recruited from among the best of the State judges, while the Supreme Court Bench, which is the peer of any tribunal in the world, has, for the most part, been filled by the promotions of Circuit Court and other judges.

In 1903 the Supreme Court of the United States celebrated its first centenary. Up to that time there had been in all, including the nine distinguished judges then on the Bench, fifty-seven members of the Court. Of these thirty-three had had prior judicial experience, seven of them in the United States Courts, and of the thirty-three nine had also served in both legislative and executive positions, while thirteen had had either legislative or executive experience. In fact, only three of the fifty-seven who had worn the silk gown of the Supreme Bench—viz. Justices Miller, Bradley, and Shiras—had held no prior legislative, executive, or judicial office.

It is interesting to note in this connection that the average length of

service of the United States Supreme Court justices was just under sixteen years. Thirteen served twenty-five years or more, five served over thirty years, while three, Justices Field, Marshall, and Story, served no less than thirty-four years. It may also be mentioned that twenty-two justices were over seventy years of age when they retired, five were over eighty, and Chief Justice Taney had attained his eighty-seventh year.

Mr. Justice David Josiah Brewer was born in Smyrna, Asia Minor, on June 20, 1837, and was appointed by President Cleveland to the Supreme Court Bench in December 1889. He was therefore fifty-two years of age at the time of his appointment. He was the son of an American missionary. He was graduated from Yale in 1856, and from the Albany Law School in 1858. He began to practise law at Leavenworth, Kansas, in 1859, and three years after his admission to the Bar he was elected a judge of the Probate and Criminal Court of his County. At the expiry of his three years of office, when only twenty-eight years of age, he was elected a judge of the District Court, which at that time was the appeal Court of last resort in Kansas. This position he occupied for four years. He then returned to the Bar and served twelve months as County Attorney of Leavenworth County, when at the early age of thirty-three he was elected a justice of the Supreme Court of Kansas, which had succeeded with enlarged powers and jurisdiction to the District Court of that State. He served in that position for four years, and was then appointed by President Cleveland to be the judge of the United States Circuit Court for the Eighth Circuit, which embraces over a dozen important states and territories lying in the west basin of the Mississippi Valley.

When finally Mr. Justice Brewer was appointed an associate justice of the United States Supreme Court in 1889, as above stated, at the age of fifty-two, he had served as a judge for no less than twenty-seven years, and had had in all only four years' practice as a lawyer, even assuming he began to practise the moment he was called. Another interesting and equally remarkable incident connected with his appointment is that when he took his seat on the Bench he found there, as one of his judicial associates, his uncle, Mr. Justice Stephen Johnson Field, who had been appointed in 1862. For ten years uncle and nephew were members of this august tribunal. Mr. Justice Field resigned from the Bench in 1898, after having been a member of the Court for forty-two years.

In 1899 Mr. Justice Brewer and Chief Justice Fuller of the United States Supreme Court were the representatives of the American Government on the Tribunal of Arbitration which sat in Paris to determine the boundary between British Guiana and Venezuela, the representatives of this country being the late Lord Russell of Killowen and the present Master of the Rolls, with M. de Martens, of Russia, as the fifth arbitrator.

Mr. Justice Brewer has the true judicial instinct, and this explains why he was so frequently and continuously called to judicial positions by popular

suffrage before he was finally appointed for life to the Supreme Court. His chief characteristics as a judge are his almost too great patience and courtesy with counsel, his extensive fund of legal lore, his incisive analysis of argument, his grasp of the fundamental principles which underlie the constitutional law of the United States, and his readiness in applying these principles to cases in which the facts are complicated and the interests involved are of great importance. His opinions and judgments, especially in matters relating to the liberty of the subject and the rights of persons natural and artificial, fill many hundreds of pages in the twenty-four volumes of Kansas Reports (from the 7th to the 31st), which were issued while he was on the Bench of that State, and in the last sixty-six volumes of the United States Supreme Court Reports. These in the future will be regarded as an inexhaustible storehouse for the student of constitutional law. The most notable, perhaps, of his judgments are those in the Prohibition Liquor cases in Kansas; the Chinese Deportation Cases (149 U.S. 698); the construction of the Federal Contract Labour Law, as applied in the case at Bar to a clergyman engaged in England to be the rector of a church in America (*Church of the Holy Trinity* v. *U.S.*, 143 U.S. 457); and the authority of the United States Government to restrain by an injunction the acts of railway strikers who were interfering with the carriage of the United States mails (*In re Dibs*, 158 U.S. 564). To these may be added his judgments in a large number of railway and telegraph cases, and in matters affecting the rights of the Federal and the State Governments with respect to municipal and private corporations and the authority of the national and the various State Governments.

IMPERIAL CONFERENCE—OR COUNCIL?

[*Contributed by* Sir Thomas Raleigh, K.C.S.I., D.C.L.]

The Desire for Unity.—If the correspondence laid before Parliament by Mr. Lyttelton in November last does not exactly solve the problem of Imperial Organisation, it indicates clearly enough the direction in which the minds of statesmen are moving. There is a very general demand for some more definite and permanent expression of our political unity: the consensus on this point is so complete that no further argument seems to be necessary. When we come to details, there is a tendency on the part of the self-governing Colonies, or some of them, to hang back, lest, in lending themselves to the scheme of an Imperial Council, they may compromise their position as independent members in a federation of States. The feeling is natural and legitimate; if we do not consider it carefully now, it will emerge in a more troublesome form at a later stage of the discussion. From Cape Colony and Natal, from Australia and New Zealand, we have replies which do not suggest any difference of opinion. But Newfoundland, failing perhaps to apprehend the purport of the questions addressed to her, thinks it necessary to enter a caveat against any scheme which would bind her to co-operate with a central authority. She wishes to know whether the proposed Council is to be an advisory body, or a body with executive or legislative powers, and surmises that on either basis the Council would have a voice in the policy of the Empire, with corresponding obligations to be assumed by the Colonies represented. Canada, after taking time to consider, returns an answer to the same effect. In the opinion of her statesmen, even a deliberative Council, if endowed with a continuous life, might come to be regarded as an encroachment upon the full measure of autonomous legislation and administrative power now enjoyed by all the self-governing Colonies.

Local Independence.—It may be admitted that a central authority, if it is to have any significance at all, is hardly compatible with the notion of absolute local independence. But where, in this age of the world, is absolute independence to be found? Canada may insist, as some of her publicists tell us, on being mistress in her own house; but absolute she can hardly be. Of the federated powers which make up the British Empire, none is less "mistress in her own house" than England, whose domestic

politics are largely controlled by other parts of the United Kingdom, while her Imperial policy is often determined by the interests and the sentiments of her partners beyond sea.

With a view to meet the real difficulties of the case, we may now go back to Mr. Lyttelton's original proposal and examine it point by point. In a matter of this kind it is safe to assume that the advent of Lord Elgin does not portend any sudden or abrupt departure from the accepted policy of the Colonial Office.

Sketch of the Scheme: "Imperial Council."—What Mr. Lyttelton proposed was in substance as follows:

(1) That the title "Imperial Conference," which suggests a single meeting, should be discarded in favour of "Imperial Council." Canada prefers "Conference" as indicating "an unconventional gathering for informal discussion of public questions, continued, it may be, from time to time, as circumstances external to itself may render expedient, but possessing no faculty or power of binding action." The words "external to itself" are enough to show the extreme care with which this sentence was drafted, and the note of apprehension is not to be mistaken. But on this side nobody suggests that the Council should have any power of binding action. This being so, it is probably wise to defer to the Canadian objection. It matters little what the Conference, or the Council, is called. What we desire to have is, more or less regular meetings for the exchange of information and ideas.

Constitution of the Council.—(2) That in the proposed Council, the British Government should be represented by the Secretary of State for the Colonies; the Colonies by their Prime Ministers, or by specially appointed representatives. "India, whenever her interests required it, would also be represented." If the Council is to be Imperial, I venture to suggest that India should always be represented. In a body exercising administrative powers, or voting on disputed questions, it might be difficult to co-ordinate the votes of independent democratic States with the vote of an official and definitely subordinate Government, such as the Government of India. But in a meeting for informal discussion there can surely be no objection to hear what is said on behalf of three hundred millions of people, all vitally interested in every problem of Imperial tariff policy or Imperial defence. When such problems have been under discussion, it has been too much the practice to consult the self-governing portions of the Empire, in the belief that what they accept may then be sent out in the form of orders to India. It would in most cases be far better to consult India with the rest, and it is important that colonial administrators should know something of the needs and the resources of that part of the Empire.

What of the Colonies which do not possess responsible government? On this question the correspondence throws no light, but we may have

to find an answer to it, sooner or later. It would, so far as I can see, be fairly easy to keep the Conference within limits (it should not, in any case, be so numerous as to swamp the Prime Ministers), and at the same time to provide for the occasional representation of British possessions interested in particular questions. A practice of this kind has been followed of late years in making appointments to the Legislative Council in India. Under the Councils Act, the members of that body are appointed for two years; it has been of late the custom to appoint members to take part in the discussion of a particular measure, on the understanding that they vacate their seats when that measure is disposed of. Thus, for example, when the Assam Labour Bill was introduced, two planters were added to the Council; when that Bill was passed, these gentlemen gave place to others who were wanted for some other Committee. If this kind of adaptation is possible in a body possessing a parliamentary constitution, it should be easy to give some degree of flexibility to a body constituted by executive orders.

The Permanent Commission.—(3) That, with a view to the preparation of questions submitted to the Conference, a permanent Commission should be established, to consist of persons appointed by the British Government and of persons appointed and remunerated by the colonial governments. Such a Commission would require an office and a secretarial staff, for which the British Government is willing to pay.

Here, again, Canada is apprehensive. Lord Grey's Ministers "cannot wholly divest themselves of the idea that such a Commission might conceivably interfere with the working of responsible government." This danger may perhaps be warded off by defining, a little more closely, the duties of the Commission. What Mr. Lyttelton appears to contemplate is a body of permanent officials, *i.e.* of officials appointed for a fixed time, but removable in certain events. If, for example, a Protectionist Premier wishes to displace a Free Trade Commissioner, I take it that neither the Commission nor the Conference would have any right to interfere between superior and subordinate. The work of the Commission would consist mainly in collecting facts, in supplying digested and verified information to public authorities who can make a practical use of it. It would, in short, be the Intelligence Department of the Empire, but it would not "interfere with the working of responsible government" any more than the Intelligence Department interferes with a commander in the field. To take only one of many illustrations which occur to me: the India Office has just completed the outline of a new scheme for the training of forestry students. The Secretary of State has to sanction the scheme; he and his Council have to provide the funds; but it is evidently no part of his duty to let Canada know what India is doing. If Canada gets to know, it is only because some Canadian official happens to hear of the Indian scheme, and sets himself to enquire about it. The scheme should go to Canada as a

matter of course, but it may not go, if it is nobody's business to send it.

Merits of the Scheme.—In discussing projects of this kind with officials of experience, one discovers that they share, to some extent, the doubts expressed by colonial statesmen. They deprecate the notion that local questions can be settled by a central bureau, on paper, in Whitehall. My belief is that, if the scheme of a Commission were properly worked, it would make the local authorities more independent of Whitehall than they are now. When they are starting or reforming a department, they often have to indent on England for a specially trained adviser, and they do not always get the kind of man best suited to their requirements. It is to be hoped that exchange of information would lead in due time to exchange of services and men. If we had a more systematic record of our experiments in government and education, local authorities would know where to look for the right man; and good service in one part of the Empire would be recognised as qualifying for higher responsibilities in another.

It is hardly necessary to point out that a permanent Commission, assisted by competent draftsmen, could do much to promote the improvement of our laws. We are far past the stage at which ardent reformers imagined that all rules of law could be codified, and that the same model code could be made to suit countries of different traditions and habits. But when we compare the systems of law administered in this Empire we find many cases of difference and conflict which are merely accidental, the result of obvious defects in our legislative methods, serving only to provide hard cases for the Judicial Committee of the Privy Council. We ought to be working systematically and continuously at this part of the subject, but no Government, not even the British Government, possesses the appropriate machinery. It would be for the Commission to provide us with a plan, and for the Conference to say whether the plan is feasible or no. The Society of Comparative Legislation may claim to have demonstrated the unsatisfactory character of our methods; and Mr. Lyttelton's proposals may give us at least the starting-point for practical effort.

Mr. Lyttelton's scheme is to some extent identical with the scheme advocated by Sir F. Pollock; but in the foregoing observations I limit myself to the official documents, because they show what is immediately feasible, and where our first difficulties are likely to arise.

"CORPS DE DROIT OTTOMAN."[1]

[*Contributed by* Sir Roland Wilson, Bart.]

The most disappointing thing about this very valuable compilation is the place from which the Preface is dated: "Madrid, Dec. 1904." For it seems to imply that the accomplished editor is either leaving to others the completion of his half-finished task, or else will have to complete it without the peculiar advantages attaching to a Secretary of the British Legation at Constantinople. However that may be, we have reason to be grateful for what has been already accomplished.

Before the appearance of the present work the only text-book of modern Turkish law having any pretension to completeness, and accessible to European readers, was Aristarchi Bey's *Législation Ottomane*, of which Mr. Young says (Introd. p. xiii note): "It is a compilation of French translations of laws and regulations, published in 1873-4 by a Greek journalist, and supplemented in 1878. The accuracy of the renderings is not unimpeachable, and references to the Turkish texts are lacking; the arrangement is confused and inconvenient, and it has no index. Perhaps a third of its contents has been abrogated and another third modified. Nevertheless, for lack of competitors, this work is sold at exorbitant prices, £T10 to 15 (=£9 to £13 10*s.* English), and the supplement added in 1878 is almost unprocurable."

The first sentence of this paragraph is not strictly accurate, seeing that the last part of the supplement that has hitherto appeared (seventh of the entire work) bears date 1888; but it is true that the latest legislative matter included in it—namely, Books IX.—XVI. of the Ottoman Code—was enacted, and officially promulgated in Turkish, as early as 1876. The excuse offered for this long delay in producing the translation was the exceptional difficulty of the task. It did not apparently fall within Aristarchi's plan to take notice of any laws or regulations other than the Codes, subsequent to 1878; but even so, it is still in one respect more up to date than the work now under review, inasmuch as Mr. Young's scheme reserves the whole of the Code Civil, together with six other codes, for the very last of the four volumes still unpublished. As regards

[1] Par George Young, 2me Secrétaire de l'Ambassade d'Angleterre. Oxford: Clarendon Press, 1905. (Three volumes published out of seven promised.)

exorbitant prices, it is about a year and a half since the present writer had a copy offered him, including the first supplement, at a price considerably below the lowest figure mentioned by Mr. Young for the original work without any supplement. The arrangement is certainly open to criticism ; the primary threefold division—*Droit Privé*, *Droit Public*, *Droit International*—though suitable enough for a work of abstract jurisprudence such as that of Professor Holland, is rather beginning at the wrong end with reference to the practical needs of the mass of readers for whom these two works are chiefly intended. They would mostly prefer to commence, as Mr. Young does, with the political constitution of the Ottoman Empire and its administrative divisions, and then to examine the organisation of its courts of justice, before concerning themselves with the questions to be adjudicated therein. But after this point we find Mr. Young on the whole the more confusing of the two. Why his exposition of substantive private law should begin with *droit successoral* ; why his subdivision of family law, which is connected with *droit personnel*, and especially with the law of marriage, as effect with cause, should not only precede the latter, but should be separated from it by some two hundred pages dealing with the constitution and political relations of the various non-Mussulman communities ; why, after tacking on (not inappropriately) *droit de propriété immobilière* to *droit successoral* in vol. i., the editor should reserve the almost identical *droit foncier* for the as yet unpublished vol. vi. ; and why *droit intérieur* and *droit extérieur*, which might be supposed to cover between them all possible kinds of law, should be co-ordinated as minor divisions with such headings as *droit personnel*, *droit militaire*, *droit maritime*, etc., passes our comprehension.

Strangest of all is it, at first sight, to find Civil and Penal Codes, and Codes of Civil and Criminal Procedure, together with Codes of Commerce and of Commercial Procedure (making up, one would imagine, the entire *corpus juris*), lumped together under the tautologous heading, "*Droit Justicier*," and relegated to the very end of the unpublished portion of the collection ! But for this particular paradox there may very possibly be a perfectly rational explanation. The procrastination of the editor may be the inevitable reflection of the proverbial procrastination of the Turk. It is impossible to gather from either Aristarchi Bey or Mr. Young any clear notion of the actual stage reached in regard to these codes ; but strange to say, the 1888 edition of Aristarchi comes nearer to supplying up-to-date information than this new compilation of 1905. We should not have learnt from the latter even so much as that 1,851 sections of the Code Civil had become law prior to 1877. All that we are told by Mr. Young is, that a collection in Turkish, called the *Deutour*, of the more important laws promulgated down to 1886,[1] is the only official and authoritative edition of Ottoman statutes ; that after the conclusion of this series at

[1] The context shows that "1866" must be a misprint.

the last-mentioned date a Commission was appointed to study the question of the publication of laws; that this Commission is apparently still in existence, but that its labours have not, so far, produced any definite result. In view of this huge hiatus between promise and performance, an editor may well be excused for projecting Turkish codified law as far into the future as any method of arrangement, however eccentric, will permit; just as the biblical encyclopædist, having to depend on a procrastinating contributor, was justified in entering under the heading "Deluge," "see Flood," and then under the heading "Flood," "see Noah," and so on. After all, seeing that few purchasers of a work of this kind are likely to contemplate continuous perusal, unless possibly for examination purposes, the order in which the topics follow each other matters little in comparison with a good index; but for this, alas! the reader will have to wait till the whole is completed.

To all such criticisms the editor has replied by anticipation in his Preface, that it was necessary to carry out the work in a manner only permissible to a pioneer, owing not only to the very inadequate amount of time at his disposal, but also to the very peculiar difficulties of his task: difficulties in obtaining information, and difficulties, connected with his official position, as to using the information when obtained. It would be too much to expect of a young diplomatist that besides a perfect mastery of French, with apparently a good working knowledge of Turkish, Arabic, and modern Greek; besides being at once an investigator and a model of official discretion, he should also be a scientific jurist; and it would need a very scientific jurist indeed to reduce to anything like order such intractable material as the laws of the Ottoman Empire.

All systems of positive law, when closely examined, disclose at least one source of confusion and inconsistency—namely, that there is more or less of conflict, and more or less of awkward compromise, between old principles which the legislator dare not openly repudiate, and new principles really believed in by those in whom the law-making power resides. But in Turkey this source of confusion is doubled if not trebled. The original principle, which the Sultan dare not openly repudiate, is the sufficiency of the Koran and the Sunna, when properly interpreted, to solve all possible legal questions, and the absolute invalidity of any ordinance contravening these primary authorities. The official custodians of this principle are the tribunals of the Sacred Law (Shariat or Sherrah; Fr. *Chéri*) under the direct control of the Cheikh-ul-Islam.

But even in the palmiest and most orthodox days of the Empire the practical necessity for other laws and other tribunals had made itself felt, and the Nizamié Courts, guided by regulations emanating directly from the will of the Sultan, would probably in any case have gone on enlarging their jurisdiction at the expense of the ancient and more strictly Islamic system. It was so, for instance, in Muhammadan India, long before any foreign

pressure had come in to complicate matters, and that it should be so will not surprise any one who is conversant with the nature of the Sacred Law on the one hand and the exigencies common to all human governments on the other. It is true that the Nizamié regulations also had to be certified by the Cheikh-ul-Islam as containing nothing contrary to the Sacred Law; but the Sultans had only to study the history of their Byzantine predecessors in order to learn the secret of securing the requisite pliancy on the part of the ostensible religious head of the community.

The peculiarity of the modern situation, however, is that the question is not merely of the will of the Sultan overriding the formal precepts of the Chéri, but also of pressure from outside overriding the will of the Sultan, and of varying degrees of harmony or antagonism among the foreign Powers applying this pressure. Mr. Young's official position precludes him from discussing the motives of the mass of legislation that he sets before us; but readers of this Journal will not need to be reminded of the main facts of modern Turkish history; how the constantly recurring sequence has been resistance, submission, evasion, in face of the more and more imperious demands of the various Christian Powers, sometimes pressed collectively, sometimes separately, either for the maintenance and enlargement of the ancient extra-territorial consular jurisdictions and mixed tribunals, or for reform of the internal administration in accordance with Western ideas of progress, or, still more often, for special legislation in favour of the sect specially patronised by each particular Power. To this the Cheikh-ul-Islam, holding office during the good pleasure of the Sultan, has to accommodate his *fatwas*, availing himself in the last resort of the Islamic principle that *force majeure* may excuse what would otherwise be improper. That legislation so brought about should obtain no avoidable publicity, is only what one might expect. The Turk does not, like Caligula, post up his laws so high and in such small letters that it is impossible to read them, in order that he may have the pleasure of punishing his subjects for unintentional disobedience, but he may not unfairly be suspected of veiling some of them in obscurity because he had rather they were disobeyed than obeyed.

The Cheri or Sacred Law.—The student of comparative law will find quite an embarrassing wealth of matter, and for the purpose of a brief review selection is rather difficult. But considering that the King-Emperor of India is the one potentate who surpasses the Sultan of Turkey in the number of his Mussulman subjects, no topic can well have a stronger claim on our attention than the treatment accorded to the distinctive theocratic law of Islam by the Ottoman and Indian legislators respectively. In Turkey, as we have seen, there is a set of Courts exclusively concerned with the Shariat or Chéri, though all tribunals are theoretically bound to conformity with the Koran; just as in England there used to be, and on a very reduced scale still are, Courts exclusively concerned with the

Canon Law, while faint traces still remain of the theory that all Courts and all laws must be conformable to the religion of the State. In India, where the government is avowedly neutral amidst a similar diversity of religions, there are no separate tribunals for Muhammadan or any other kind of theocratic law; so far as diversities of personal law are concerned, all Civil Courts may be said to be omni-competent. It often happens that a point of Muhammadan law comes to be argued before a Hindu judge, and *vice versâ*; still more often the final interpretation of either Hindu or Muhammadan law rests with a Bench of Christian judges. But on the other hand the application of this undiluted, theocratic Muhammadan law is restricted to professed Moslems almost as completely in Turkey as in India, and the similarity is much closer than one would *à priori* have expected as regards the range of subjects to which alone it is applicable.

A circular of the Turkish Minister of Justice, dated March, 1887 (Young, vol. i. p. 291), defines the competence of the tribunals of the Chéri as extending to "divorce, marriage, maintenance, fosterage, *enfranchisement, slavery, retaliation* (*kisás*), *price of blood* (*diyat*), *compensation for maiming or causing miscarriage*, administration of the property of deceased persons (partage de succession: kassam), absence or disappearance (of heirs or legatees?), wills and inheritance (héritage: miras)." In contradistinction to these the circular assigns to the Nizamié Courts "commercial affairs, criminal affairs, questions of conflicting interests (*interêts non composés*—a curiously vague heading), of legal damages, of leases of land, and of contracts." All other questions are to be examined by the tribunals of the Chéri if the parties consent, otherwise by the Nizamié tribunals.

To all the matters specified in the first clause of the above circular, except those distinguished by italics, the Muhammadan law is applied in British India where the parties are of that religion. There was a time when the *lex talionis* and various other archaic provisions of the Muhammadan criminal law were administered by the Courts of the East India Company, and when slavery, as regulated by that law, was also a recognised institution; but it is needless to remind the reader that this sanction has long ago been withdrawn.

One institution of Muhammadan law, which has been prolific of litigation in British India, is not specifically mentioned either in the Indian enactments or in the Turkish circular, being apparently regarded in both countries as a branch of the law of succession. We refer to *wakf* (Fr. *vacouf*), *i.e.* the permanent dedication of property to some (so-called) pious purpose. The great controversy in the Indian Courts has been whether property can be said to be "dedicated to God for the benefit of mankind" when the sole or principal declared purpose is the preservation or enhancement of the dignity of a private family. The negative view has ultimately prevailed in the Courts, but the affirmative is generally upheld by Indian Muhammadans, and in Turkey it seems to be so completely

accepted as a matter of course that advantage has been taken of it by the Government to frame an entirely new law of inheritance for lands that have been settled by way of *vacouf*.

The Old and New Rules of Inheritance.—As is well known, the ordinary Islamic law of inheritance, framed for a pastoral, trading, and raiding people, is eminently unfavourable to the growth of large landed estates. Not only is there equal division among sons, and proportionate division among sons and daughters, but before that division certain fractions are cut off for the father, the mother, and the wife or wives of the deceased; while the power of bequest, being limited to one-third of the estate, is not of very much use as an aid to concentration, and is rather more likely to assist the process of dispersion through the multiplication of petty legacies. Mr. Young does not specify the source from which he has taken his description of this system, but presumably it is based directly or indirectly on the Sirájiyyah, the most authoritative monograph on the subject according to the Hanifite school, which is the predominant one alike in India and in Turkey. If so, there are one or two small inaccuracies in his summary: the son's daughter should have been mentioned as one of the descendants whose existence reduces the share of the widow or widows to one-eighth; and the mother's share is not reduced from a third to a sixth by the existence of a single brother or sister—there must be at least two "brethren," though the sex is immaterial. But the really important thing to note is that this, the common inheritance law of Islam, which the British Government has not dared to modify for its Mussulman subjects in the smallest particular,[1] is stated to be only applicable in Turkey to property held in full individual ownership (*mulk*), while by enactments of 1867 and 1875 a very different scheme of inheritance is provided for *emirié* and *mevcoufé* lands—that is, to lands belonging to the State domain and held by individuals on renewable beneficial leases, and to lands permanently dedicated as *vacouf*. It seems to be compulsory for some kinds of *vacouf*, optional for others. Parents come in after descendants instead of sharing with them; sons and daughters share equally, instead of the female taking only half as much as the male; grandchildren and remoter descendants take *per stirpes* as in most other systems, instead of *per capita* as under the general Islamic law; and the husband or wife only comes in after brothers and sisters. It would be interesting to know what proportion the lands thus withdrawn from the operation of the common law bear to the whole soil of the Empire; but on this point the work under review naturally throws no light. At all events it is a remarkable example of what a Moslem government can do, when put to it, with inconvenient Scriptural injunctions.

Marriage.—Passing from succession to the logically connected but typographically separated topic of marriage (vol. ii. p. 206), we find a

[1] Except in the Punjab, where greater latitude is allowed to local custom.

summary of the general matrimonial law of Islam, purporting to be based on certain official works recently published by the "Cheikh-ul-Islamat."[1] It is in essentials the same as that administered between Muhammadans in British India, though Indian text-books do not deem it necessary to lay down in express terms that marriage with a spirit (*djinn*) or with a mermaid is a legal nullity! Concerning married women's property, the text is in full accord with Hanifite law as understood in India, in so far as it states broadly that the husband has no right to meddle with his wife's fortune. But unfortunately this plain and correct statement is contradicted by a footnote, to the effect that "the husband has the enjoyment of all that belongs to his wife, who cannot dispose of more than a third of her fortune without his consent." The authority cited is the French version of Tornauw's *Moslemische Recht*; but Mr. Young has overlooked the fact that all the rules given in that work are those of the Shia sect, except when other sects are expressly mentioned. Even as a statement of Shia law it is unsupported by the authorities followed in India; and as regards the latter part of the sentence the fact of its being immediately followed by a reference to the author's chapter on Wills seems to indicate that he had nothing more in his mind than the well-known rule, common to all sects, that *nobody* can dispose *by will* of more than a third of his or her property unless the heirs, whose shares would be diminished by such disposition, give their consent. The husband is always one of his wife's heirs, though rarely her sole heir; and his consent in that capacity, which by Shia (not by Hanifite) law can be given in the lifetime of the testatrix, would validate, so far as his share was concerned, a bequest in excess of the legal third.

With respect to mixed marriages, our author states correctly that a Moslem may marry a woman who is a Christian or a Jewess, but omits to inform the reader that the converse does not hold, a Moslemah being incapable of marrying any one but a true believer. The authorities which declare that difference of allegiance is a bar to intermarriage are ignored in India, and we are here told that they have been specially overruled in Turkey by a *fatwa* of the Cheikh-ul-Islam—with one very curious exception, viz. that marriage is forbidden between Ottoman and Persian subjects, even though both parties should happen to be orthodox Mussulmans. This may perhaps be regarded as an extension of the policy of the rule that a Sunni may not marry a Shia (itself unsupported by the authorities followed in India), it being apprehended that a Sunni owing allegiance to a Shia Government will hold his orthodoxy by a precarious tenure, and will at all events be forced to contribute to the promotion of Shia interests. There is no similar objection to intermarriage with orthodox Muhammadans who are Russian or British subjects, because those Governments do not

[1] We are glad to find that Mr. Young is not personally responsible for this philological monstrosity, which is as though one were to speak of the Holy See as the "Pope-of-Rome-ate"! The same phrase occurs in Aristarchi.

concern themselves about the sectarian differences among their Mussulman subjects.

Side by side with the actual marriage law, Mr. Young introduces us to the Turkish reformer's ideal, as embodied in an abortive bill—we are not told when or by whom drafted. It is mainly a sumptuary measure, for checking extravagance in marriage settlements, in wedding presents, and in wedding festivities; the notion being apparently that the expenses imposed by custom, especially upon bridegrooms, operate as a deterrent to lawful marriage, and therefore to the keeping up of the Mussulman birth-rate.

Slavery.—It is in succession and marriage that the old law of Islam most nearly holds its own. When we come to slavery, the pressure of foreign influence is much more marked. An ingenious writer has endeavoured to persuade us that slavery is abhorrent to the spirit of Islam, and that Mahomet went as far as circumstances would allow in paving the way for its ultimate abolition. But the Koran has never been so understood by its authorised exponents, and we have just seen that so late as March, 1889, in a circular emanating from the Turkish Ministry of Justice, slavery figured among the subjects within the competence of the tribunals of the Chéri. It is therefore a little surprising to find the Minister of the Interior, in a circular of May, 1889, declaring that "the Imperial Government does not officially recognise the status of slavery"! The explanation suggested is that the jurisdiction of the Chéri Courts was very little resorted to, owing to the incongruity between the domestic arrangements actually in vogue and the rules which those Courts held themselves bound to deduce from the Koran. They, for instance, would lay down, as their compeers did in British India, that the only lawful origin of slavery is capture in a holy war, which would leave very few modern slave-owners with an unimpeachable title to their human chattels; while some other Koranic rules would bear rather hardly on the slave. Consequently the whole institution had come to be regulated by loose unwritten usage; and the Government, being obliged "faire face à l'Europe," shrank with good reason from the more direct and public responsibility involved in the promulgation of a new Slave Code. The occasion of the last-mentioned circular was a petition of certain negro slaves to be exempted as such from the conscription, and by pleading that he had no official knowledge of such a status the Minister was enabled to make a favour of granting a part only of what was asked for. We have a still more curious example of Turkish logic in the firman of Sultan Mahmoud in 1830, concerning those Greeks who had been consigned to slavery as a punishment for their participation in the War of Independence. Some of these ex-rebels had declared themselves Mussulmans, while others adhered staunchly to their Christian profession. It is thereupon ordered that the latter are to be released while the converts are retained in slavery! Here, as elsewhere, the editor is

diplomatically reticent as to motives, but it may be plausibly conjectured that after Navarino fear of further embroilment with the Christian Powers was the uppermost thought in the mind of the Sultan, who might shrewdly suspect that they would not greatly concern themselves with the fate of the renegades so long as he dealt gently with their co-religionists. But it must also be remembered that Mussulman slavery is capable of being rendered very endurable, and that it has often proved the first step in the ladder of promotion to the highest offices of the State.

That it should be left to the reviewers to supply all such sidelights as these is not the compiler's fault, though it is certainly the reader's misfortune. In Mr. Young's own words, "le commentaire donné en notices préliminaires et notes a du être strictement limité aux aperçus les plus anodins et aux généralités les plus banales." Within the limits imposed upon him he has acquitted himself so as to deserve our gratitude.

Some few inaccuracies in an avowedly pioneer work we must expect to find, and we do find. One or two have been noticed already; and here is another in this same title on Slavery. We are told in the text (II. 168) that according to the ancient Turkish usage, now to some extent superseded by the less liberal system known as the Circassian, "le mariage, *même entre les esclaves*, affranchissait les parties et bien entendu leurs enfants"; but the passage of Tornauw, which is referred to in the footnote as the editor's authority for this statement, merely says "les femmes esclaves qui épouvent avec l'assentiment du maître *un homme libre*, sont libres," which is a very different story. Not that even this can be accepted as correctly representing Tornauw's view of the laws which the Chéri Courts are bound to administer in Turkey. He is speaking, here as elsewhere, of the Shia law, and is at the pains to inform us, in the very next sentence, that the Shafeites and Azemites (*i.e.* Hanifites) do *not* require the master to enfranchise the slave girl whom he permits to marry a free man.

The subjects discussed in this review are very probably not those by the treatment of which the value of the book will be measured by those readers for whom it is chiefly intended. The politician and the diplomatist will look to "Droit Administratif" and "Droit Militaire" in vol. i. and to "Droit Extérieur" in vol. ii.; the missionary to "Droit des Communautés Privilégiées"—a very complex bit of history well elucidated—and to the titles "Censure de la Presse" and "Instruction Publique" in vol. ii.; the traveller to the regulations concerning passports and police under "Droit Intérieur" in vol. ii.; the merchant, after perusing "Droit Maritime" and "Droit Commercial Extérieur" in vol. iii., will wait impatiently for "Droit Commercial Intérieur" in the promised vol. iv., and the investor for "Droit Financier," "Droit Fiscal," and "Droit Foncier" in vol. vi.; while all will have to wait, perhaps indefinitely, for the complete codes reserved for vol. vii. Concerning all these matters we can only say generally that even in its present fragmentary state the work will be found

extremely useful, and that it promises to be much more so when completed and furnished with an index. Also that, if all that is therein set down worked as fairly in practice as it reads in print, Turkey would be by no means a bad country to live in—*for a foreigner*. Whether, as between the Mussulman and the non-Mussulman subjects of the Sultan, the former or the latter is on the whole the more heavily burdened, seems to be quite an open question.

THE PASSPORT SYSTEM.

[*Contributed by* N. W. Sibley, Esq.]

The Use of False Passports as a Crime.—The recent decision of the King's Bench that the act of obtaining a passport for an alien under another name than his true name is an indictable misdemeanour at the common law (*R.* v. *Brailsford and McCulloch*, Times Law Rep. vol. xxi. 727; Aug. 4, 1905) recalls the fact that such an act was formerly punished by statute by imprisonment for one year, with an additional liability to transportation for seven years (Aliens Act, Stat. 38 Geo. III. c. 50, s. 19 [1798]), and that the use of false passports was a circumstance that transpired in evidence at one of the most famous State trials of the last century, when the use of explosives and political crime also formed part of the *res gestæ* (*R.* v. *Bernard* [1858], 8 St. Tr. N.S. 887).

The facts out of which the recent prosecution arose were implicitly that a passport was obtained for an alien under a false name, and it transpired that he was engaged in some conspiracy against the government of another country. In this respect the circumstances recently specifically adjudicated upon find a curious parallel in facts adduced in evidence at the trial of Simon Bernard (1858, 8 St. Tr. N.S. 887), who was indicted and tried as accessory before the fact to the murder of one of the Garde de Paris killed by the grenades thrown by Orsini and his associates at Napoleon III.

It appeared in evidence at the trial that Orsini travelled to Paris under a passport granted in 1851 to Thomas Allsop by Lord Palmerston. Lord Campbell, L.C.J., after alluding to that circumstance in his summing-up and directions to the jury in *R.* v. *Bernard*, added that Gomez succeeded in reaching Paris also by means of a false passport under the name of Swiney, that Pierri went there with a passport under the name of Andreas, and that Rudio made his way to the same capital, likewise by means of a false passport, under the name of Da Silva (cf. *Times*, April 19, 1858).

In his *Life of Lord Loughborough*, Lord Campbell made an observation that might superficially be construed as a condemnation of the passport system, but which clearly must be confined to the special conditions under which passports were required to be held and produced by aliens travelling in this country under the Aliens Act of 1793. From Lord Campbell's summing-up in *R.* v. *Bernard*, it is clear that he took a serious view of the misuse of a passport in the ordinary sense of the term.

The circumstance that Lord Campbell in *R.* v. *Bernard* seemed to go out of his way to comment on the fact that Orsini and all his associates used false passports obtained from the Foreign Office in this country, may be considered to adumbrate the grave view that has come to be taken of the offence. It was clearly not necessary for Lord Campbell to have called the attention of the jury to the fact, as it had nothing to do with the event under consideration, which was whether Bernard was accessory before the fact to murder. Bernard himself did not use a false passport when he assisted in transporting the grenades which were used in the *attentat* to Brussels. The Earl of Derby, in a speech in the House of Lords, attributed the opportunities granted to Orsini which enabled him to commit his crime to the neglect exhibited by the passport authorities in France (Annual Register, 1858, p. 5). The Earl of Clarendon, at that time Secretary of State for Foreign Affairs, complained that the French Government empowered their consular agents in this country to grant passports, without any reference to nationality or character, entirely independently of the authority of the British Government. These passports were passed from hand to hand, and experience had shown that alien criminals were thereby enabled to commit crimes in France under the assumed designation of British subjects. The Earl of Clarendon declared that the British Government attached no importance to passports. As a consequence of the *attentat* of 1858, the French Government abandoned the system of empowering French consular agents to grant passports. It appears from this statement of Lord Clarendon that at one time the fine on British passports was exorbitantly high, and was as much as six shillings at the time (*The Times*, February 6, 1858; the duty on passports is now sixpence by the Stamp Act, 1891; *vide infra*).

Independently of the question of passports, there seems to have been considerable ground for the disposition shown in this country to blame the French police in 1858 for permitting the associates of Orsini to succeed so nearly in their nefarious design. It was pointed out in a leading article in *The Times* that three out of the four conspirators were men marked for suspicion, and that two of them had previously been in the hands of the French police. Orsini had made himself notorious for his escape from a prison in Mantua, and reappeared at Marseilles in 1855. Yet he was allowed to be unmolested in Paris for a whole month before the *attentat*. The use of a false passport seems to have been the only conceivable explanation of this, as he was a man of very striking appearance, and therefore easily identifiable (cf. Mr. Justin M'Carthy's *History of Our Own Times*, vol. iii. c. 37, p. 137; and evidence of Eliza Cheney at trial of Simon Bernard, *Times*, April 14, 1858). Further, the passport which Orsini carried was out of date, having been granted seven years before the date of the *attentat*, and therefore was not a passport in "regular order."[1]

[1] The enquiry instituted by Lord Salisbury on March 21, 1887, as to what are the laws in foreign countries respecting the admission and continued residence of destitute

What is a Passport: its History.—The case of *R.* v. *Brailsford and McCulloch* (*supra*) clearly affords the most adequate, and apparently the first, judicial definition of a passport in the ordinary sense. Lord Alverstone, L.C.J., observed that "a passport is a document issued in the name of the Sovereign, on the responsibility of a Minister of the Crown, to a named individual intended to be presented to the governments of foreign nations, and to be used for that individual's protection as a British subject in foreign countries, and it depends for its validity upon the fact that the Foreign Office, in an official document, vouches the respectability of the person named." Passports have been known and recognised for three centuries as official documents, and in the event of war breaking out become documents which may become necessary for the protection of the bearer, if the subject of a neutral State, as against the officials of the belligerent, and in times of peace in some countries, as in Russia, they are required to be carried by all travellers. In the recent case the defendants were summoned for unlawfully conspiring with other persons unknown to obtain a passport by falsely stating that it was intended to be used by one of them for travelling in Russia, whereas it was intended to be falsely used by some other persons, thus endangering the peaceful relations existing between the English and Russian nations. The Court of King's Bench held that this constitutes a cheat and a conspiracy to deceive the Foreign Office, and that obtaining the document by means thereof is a criminal conspiracy, rendering a person liable on conviction to a fine of £100. By an Act of 1798, no alien was allowed to leave the country without a passport, and the offence of forging or obtaining a passport for an alien under a false name (precisely *in pari materia* with the offence in the recent case) was punished by imprisonment for one year, with an additional punishment, at the discretion of the Court, of transportation beyond seas for seven years (Stat. 38 Geo. III. c. 50, ss. 8 and 9; this Act was finally repealed by the Statute Law Revision Act of 1861). By a subsequent Act of 1803, an alien was not allowed even to depart from his place of arrival in the United Kingdom without a passport, and the offence of forging a passport or of obtaining it under any other name than that which was declared to the custom house officer was subjected to a reduced punishment of imprisonment, but there remained the liability to being transported for seven years (Stat. 43 Geo. III. c. 155, ss. 14 and 17). In an Act of 1814, passports were not specifically mentioned, but the officer of customs was empowered to issue certificates, and the offence of obtaining such certificate under any other name than the true

aliens elicited incidentally many interesting facts about the passport system. According to the law of the Netherlands (Law of August 13, 1849) a passport is in regular order when (i) it is issued by or on the part of the Government of the country to which the foreigner belongs; (ii) it is *visé* for the journey or passage to the Netherlands by a Netherland diplomatic or consular agent; (iii) it is not out of date.

description of such alien was punished by imprisonment for one year. After an Act of 1816, passports issued to an alien on leaving the realm do not seem to be mentioned, though a certificate continues to be so; and the offence of forging, or falsely pretending to be a person named in such a certificate, was punished by a year's imprisonment (Stat. 56 Geo. III. c. 86, ss. 8 and 14). The Aliens Registration Act of 1836 required every alien on landing to produce a passport and make a declaration, on which the officer of the customs, who was empowered to receive a passport and register the declaration, delivered a certificate to the alien. This Act annexed a penalty of £100 or imprisonment for three months for making a false declaration or forging a certificate (Stat. 6 Will. IV. c. 11, ss. 4, 6, and 9). This statute has only just been repealed by the Aliens Act, 1905, s. 10, sub-s. (2).

Vattel observes: "Safe-conducts and passports are a kind of privilege ensuring safety to persons in passing and repassing, or to certain things during their conveyance from one place to another. From the usage and genius of the French language, it appears that the term 'passport' is used, on ordinary occasions, when speaking of persons who lie under no particular exception as to passing and repassing in safety, and to whom it is only granted for greater security, and in order to prevent all debate, or to exempt them from some general prohibition. A safe-conduct is given to those who otherwise could not safely pass through the places where he who grants it is master—as, for instance, to a person charged with some misdemeanour, or to an enemy. It is of the latter that we are here to treat"—he is discussing questions on the ransom of prisoners of war (*Droit des Gens*, l. iii. c. xvii. s. 265).

It appears from this passage that, according to the authority of Vattel, a passport is a document which can only be issued when the relations of the States it concerns are normal: and this is equally an inference from the definition Lord Alverstone, L.C.J., gave of a passport in *R.* v. *Brailsford and McCulloch.* Vattel says that it is a safe-conduct, and not a passport, that one grants to an enemy; and as all intercourse between States is suspended in time of war, the Foreign Office would not grant passports to travel in an enemy's country.

Passports in Time of War.—But according to modern authorities on international law passports may be issued in time of war. Mr. W. E. Hall observes that passports are "written permissions given by a belligerent to subjects of the enemy whom he allows to travel without special restrictions in the territory belonging to him or under his control" (Hall's Int. Law, 5th ed. Pt. III. c. 8, p. 544; Halleck's Int. Law, ii. 351; Calvo, ss. 211-14; Bluntschli, ss. 675-8). A passport of this kind is mentioned in one of the State Trials (Trial of O'Coighley, O'Connor, and others for high treason [1798], 27 St. Tr. 2, 128). Such passports are, of course, not transferable, and may be annulled. An enemy subject who has taken

advantage of the indulgence which he has received by being given a passport may be punished severely. An Act of Congress passed in 1790 exposes any civilian violating a passport or safe-conduct to imprisonment for three years and a fine of indeterminate amount, and sends soldiers before a Court-martial.

Passports in Treaties: "Sea-Briefs."—The first occurrence of the term "passport" in a treaty seems to be in the treaty between Great Britain and Denmark, July 11, 1670. By Article V. it was provided that the subjects of both kings might go and trade in each other's territories in time of peace "without licence or safe-conduct, general or special." By the ensuing article a special licence was required for the subjects of either king to go to the colonies of the other, or to the prohibited ports of Denmark. Article XX. gives the form of "letters of passport and certificate" that should accompany "ships, goods, and men" in their passage and voyages. The letters might be required to be produced on land by men travelling, notwithstanding that the text of both letters of passport and certificate appear to refer exclusively to the case of a ship. It was clearly required that the letters of passport should be furnished to every person on board a ship (Hertslet's *Commercial and Slave Trade Treaties*, vol. i. pp. 187, 193). In *R.* v. *Brailsford and McCulloch*, Lord Alverstone, L.C.J., observed that passports "in event of war breaking out become documents which may be necessary for the protection of the bearer, if the subject of a neutral State, as against the officials of a belligerent" (*ibid. supra*).

A passport granted to the subject of a neutral State to travel in the territories of a belligerent serves the same purpose as the sea-brief (Fr. *certificat de nationalité*) granted in the case of a ship, which is also called a passport. Such a passport, with the flag, is the principal proof of neutrality (*The Success*, 1 Dods. 132; *The Vrow Elizabeth*, 5 C. Rob. 4; *Vigilantia*, 1 C. Rob. 1; *The Vreede Sholtys*, 5 C. Rob. 5).

In *The Vigilantia* (*ibid. supra*, p. 13) Lord Stowell considered that "the pass," and not the flag, conclusively determined the national character of the vessel. This character of a ship's passport is of course not at all affected by the Declaration of Paris, 1856; though that has, in turn, modified the consequences of the nationality of a merchant vessel in time of war.

A sea-letter or passport is among the papers required by our Admiralty Regulations (Hall's Int. Law, 5th ed. p. 728), but the Règlement des Prises Maritimes of the Institute of International Law only requires a neutral merchant vessel to produce the *certificat de nationalité* when searched by a belligerent on the high seas if its nationality cannot be inferred from the list of the crew, indicating their nationality, together with that of the master (Ann. de l'Institut, 1883, p. 217).

Lord Stowell held that, in the case of that form of passport which is called a sea-brief, the use of a false passport estopped a master of a vessel

from pleading its true nationality, while its true nationality might be pleaded against it by others (*The Success* [1812], 1 Dods. 131, 132). It may be supposed that this rule of international law applies to a passport in the more frequent sense of the term, at least in principle.

Disuse of Passports in Time of Peace.—Sweden was the first country to abolish passports in time of peace, and Russia is one of the last to retain them. It is stated in *The Encyclopædia of the Laws of England*, art. "Passport," that it is not now necessary for a British subject to use a passport either to travel in Belgium, France, Holland, Italy, Denmark, Norway or Sweden. This statement must clearly be taken with some qualification in view of Parliamentary Papers issued in 1887, which seem to be the last authentic and direct data on the subject of the passport system (Parl. Papers, 1887, No. 81). Italy gave up the passport system in 1860. But in Holland, passports were even legally demandable in 1887; though they were only required to be produced on rare occasions, in the case of suspected persons, or under other exceptional circumstances. In Belgium, according to the Parliamentary Papers referred to, the Decree of the 23rd Messidor, Year 3, requiring every foreigner to produce his passport, seems still to be in force. In Austria-Hungary, passports may be demanded, but it is sufficient, in the alternative, that a traveller can give a sufficient account of himself. But if the traveller neither produces a passport bearing the ambassadorial or consular visa, nor gives a sufficient account of himself, the authorities issue a provisional passport to travel as far as the nearest police station. In Denmark, the passport system is abolished, but passports may be required of inhabitants of countries in which Danish travellers are obliged to be furnished with them. The effect of this would seem to be that, for instance, an Englishman, a Swede, or Italian can, while a Russian cannot, travel in Denmark without a passport. In the Canton of Geneva, aliens are required to deposit passports at the police station. In Neuchâtel, in default of satisfactory passports or other papers, a temporary alien sojourner may be required to deposit a sum of at least eight hundred francs in order to procure a licence. It can only be regarded as no less a singular than a disappointing result of Lord Salisbury's enquiry in 1887, that it should have entirely failed to elicit any information about the passport system in Russia (cf. Sir R. Morier's Reply, Parl. Papers, 1887, No. 81).

The Duty on Passports.—The duty on passports issued by our Foreign Office was reduced from five shillings to sixpence by Stat. 21 Vict. c. 24. The same rule was continued by the Stamp Act, 1870 (Stat. 33 & 34 Vict. c. 97), and is still maintained by the Stamp Act, 1891 (Stat. 54 & 55 Vict. c. 39, schedule 1, title Passport). At the time of Bernard's trial, it was stated by the Under-Secretary for Foreign Affairs (Mr. S. Fitzgerald) that it was important that passports should be issued on stamped paper, in order to avoid fraud (*Times*, April 17, 1858). The view of the Foreign Office at that time, therefore, was that a passport was a document in respect

of which a fraud might be committed—a fact of some interest in connection with the recent prosecution. This view was no doubt induced by the facts that transpired at Bernard's trial, it being impossible to conceive a more flagrant abuse of an official document than that perpetrated by Orsini and his associates.

Passports in Statutes: Magna Carta.—The first mention of the term "passport" in the Statute-book occurs in an Act passed in 1548, where it is applied to a licence given by a military authority to a soldier to go on furlough (Stat. 2 Ed. VI. c. 2, s. 10). The original meaning of the term is very different from the modern sense, though in an age of feudalism it seems the natural one.

The forty-first clause of Magna Carta, which allowed all merchants to depart freely from England in time of peace, seems to have created an exception in favour of a class, the common law rule being that no person could leave the realm without licence or passport, awarded by the king in his capacity of generalissimo of the realm. The rationale of the writ *ne exeat regno* clearly supports the view that passing over the seas was objected to because it rendered the subject incapable of discharging his principal duty, that of being at the service of his king and country (1 Hawk. P.C. 22; Dyer 128*b*; Lane 44; Moor. 109). The fact that in 1382 a statute was passed, enabling classes of persons to pass over the sea, seems also to support the view that it was prohibited unless by express licence at the common law. There were anciently classes of persons who were under perpetual prohibition of going abroad; these were peers, knights, ecclesiastics, and archers and artificers. In 1382 an apparent revolution of the law on the subject of leaving the realm took place, and lords and other great men of the realm, true and notable merchants, and the king's soldiers, were allowed to pass over the sea without licence (Stat. 5 Ric. II. st. 2, c. 2, repealed by Stat. 4 Jac. I. c. 1, s. 22). It is a little difficult to understand the historical explanation of this statute. The great victories of the previous reign had not resulted in any permanent conquest, and at this date England held merely Bayonne, Bordeaux, and Calais (spelt Calice in the Statute-book). It may be supposed that the king's soldiers were allowed to pass over the seas without licence because garrisons were required at those places.

Leaving the Realm: the Attitude of the Common Law.—It clearly confirms the view that the original aspect of the common law to the subject of leaving the realm was one of prohibition, unless by licence or passport, that Sir Leoline Jenkins wrote from Nimeguen to Sir W. Temple at The Hague: "No subject of our master's (we'll put the case at home) can by the law go out of his dominions without his leave; nor is this leave, whether it be expressed or by implication (as in the case of merchants and sea-faring men) granted, but there is a time always supposed for his return; I mean when the king had need of his service; and in the case of every man of

quality it is always prefixed" (*Life and Letters of Sir Leoline Jenkins*, vol. ii. p. 713, referred to in Sir R. Phillimore's Int. Law, vol. i. p. 349). At the date of this letter the statute of 1382, giving permission to lords, notable merchants, and king's soldiers to pass over the seas, having long been repealed, the question of leaving the realm must have reverted to the position it stood at the common law, and Sir Leoline Jenkins states no less explicitly than Britton that the common law, with the exceptions arising under Magna Carta, prohibited persons leaving the realm without licence. This seems to establish that passports are documents of high antiquity, granted by the king in his capacity of generalissimo of the realm. A passage in Vattel seems indirectly to confirm this, inasmuch as it seems to show that in absolute monarchies the practice was to prohibit persons leaving the realm. Vattel observes that "Finally, there are States where the rigour of the government will not permit any one whatsoever to go out of the country, without passports in form, which are even not granted without great difficulty" (*Droit des Gens*, l. i. c. xix, s. 222, p. 105). The above view is of course quite contrary to the view that every one at the common law can leave the realm without licence (Stephen's *Blackstone*, 14th ed. vol. ii. Bk. IV. c. vi. p. 503). But the fact that, at a much later date, a statute was passed requiring aliens to take out a passport on leaving the realm seems on the whole to support the view that the rule of the common law was to prohibit leaving the realm unless with licence. The common law, on this view, prohibited persons leaving the realm on the ground that by this the king was deprived of the military service of his subjects. But this reason could not apply to aliens, and therefore it was found necessary to pass a statute prohibiting them leaving the realm unless with licence or under passport.

ROMAN-DUTCH LAW.[1]

[*Contributed by* FREDERIC MACKARNESS, ESQ., M.P.]

Its Extent and Importance.—The system of law called the Roman-Dutch Law is the system which governs the lives and property of British subjects inhabiting the whole of British South Africa, of British Guiana, and Ceylon. Speaking roughly, it is the common law of a population of about ten millions of British subjects, and is operative over an area of a million of square miles of the British Empire. No doubt over a large part of this vast area—how vast can be realised when it is remembered that the area of England and Wales is only 57,668 square miles—the population is non-European, and the law administered is derived largely from native customs: still there remains a European population of about a million souls for whom Roman-Dutch law is the primary governing law. It is to them that a knowledge of that law on the part of the advocates who practise in it and the tribunals which administer it is of the most importance; but even to non-Europeans the matter is sometimes vital. On several occasions—for instance, in South Africa, where the Habeas Corpus Acts prevailing in England are not in force—natives have owed their relief from arbitrary imprisonment to the principles of the Roman-Dutch law which protect the liberty of the subject.

Among the tribunals which administer the Roman-Dutch law stands pre-eminent the Judicial Committee of the Privy Council, the supreme tribunal of the Empire, and among those whose business it is to practise in that law are the English advocates who appear before it. To that tribunal come Colonial appeals to the decision of which the principles of Roman-Dutch Law may or must be applied. In the last generation alone there have been between thirty and forty appeals of this nature reported in the authorised Law Reports. But the cases there reported represent only a part of the volume of business transacted in this country which raises questions and involves rights governed by Roman-Dutch law. Yet, with the exception of a flying visit either from the Chief Justice of the Cape or the Chief Justice of Ceylon, the Judicial Committee is composed of lawyers who, eminent as they are, have had

[1] The inaugural lecture delivered at University College, London.

no instruction in or experience of Roman-Dutch law, and they are assisted by a Bar which, for the most part, is in a like condition. This cannot fail to be so, inasmuch as the educational authorities of the Inns of Court do not provide any means for members of the Bar to receive instruction in Roman-Dutch law, and it is not in any practical sense a subject for examination for a call to the Bar. Yet how worthy of study it is!—not merely for the practical reasons I have given, viz. that it is a system of law deliberately chosen by millions of our fellow subjects who have to come here in the last resort for justice, but also because it is founded on that great monument of human wisdom, the Civil Law of the Emperor Justinian, because under it the modern commercial empire of Holland reached its zenith of prosperity, and because it produced a series of great jurists whose names and whose writings have made a deeper mark on the history of jurisprudence than those of any other modern country.

The Sources of Roman-Dutch Law.—What, then, is this Roman-Dutch law? and whence does it come? It comes from the Netherlands and was in the seventeenth century imported into South Africa, Ceylon, and British Guiana by the Dutch. It was arranged by treaties that the Roman-Dutch law should continue to be the law of those colonies after their incorporation into the British Empire. The Netherlands have been occupied by a succession of peoples, Batavians, Romans, Franks, Saxons, Frisians, and finally a second time by the Franks. All these peoples had their own national customs, but all were of German origin and character. There was the *Lex Salica* in the fifth century, and the *Lex Ripuaria* of the sixth century. There were the *Capitularia* of Charlemagne, and other Frankish Emperors, compilations partly of Roman and partly of German law. Later still, there were bodies of law known as the *Lex Saxonica* and the *Lex Frisia*. All these systems were in partial or local operation up to the tenth or twelfth century, and may be described as representing the customary law of the Netherlands; but supporting and supplementing them all was the *Lex Romana*, the Roman law, not of Justinian's famous Digest, but of the earlier Code of the Emperor Theodosius. During the earlier middle ages the favourite textbook throughout the Frankish Empire was the *Breviarium*, compiled, by order of Alaric the Younger, from the Theodosian Code, from Gaius, and from Paulus. Inasmuch as the laws of the Gauls and Germans belonged chiefly to the law of persons (*jus personarum*), they went to the Romans for their law of things and of contracts (*jus rerum* and *jus obligationum*), so that the Franks brought into the Netherlands not only their German customs, but also the *Lex Romana*. Although from the earliest times the Roman law of the Theodosian Code was the foundation or common law of the Netherlands, where local customs were deficient, it was not till the twelfth century that the civil law of Justinian, contained in the Code, Institutes, Digest, and Novells, superseded the earlier law of Theodosius. That supersession was due partly no doubt to the influence in the eleventh

century of the famous Law School of Bologna, and partly to the influence of the Canon Law, of which there were various compilations published by different Popes in the twelfth, thirteenth, and fourteenth century: till finally the *Corpus Juris Canonici* was published by Gregory XIII. in 1582. Another confirming influence was the fall of Constantinople in 1453 and the consequent migration of Græco-Roman jurists to the west: so that by the sixteenth century not only was the *Corpus Juris Civilis* of Justinian the admitted Common Law of the Netherlands, but the great Dutch jurists to whom I have alluded had begun to arise and give to the world the treatises and commentaries on which their fame has for so long rested.

We have other authorities besides these great jurists for the principles of modern Roman-Dutch law: for early in the fifteenth century there had been established at the Hague a Court of Appeal for Holland and Zealand, known as the Court of Holland. This was superseded towards the end of the century by the Supreme Court of the Netherlands at Mechelen, and this was superseded a hundred years later by the Supreme Court of Holland and Zealand. The decisions of these superior Courts were collected by various jurists who practised before them, and have come down to us in the works of Næranus, Christinæus, Neostadius, Coren, Van Sande, and others. Still more light is thrown upon the law they administered in the collection of opinions, given by the most eminent Roman-Dutch lawyers of the sixteenth and seventeenth centuries, known as the *Dutch Consultations or Opinions* (*Hollandsche Consultatien*). These opinions were of something of the same legal weight as the *Opinions of the Jurisconsults* (*Responsa Jurisprudentium*) of the early Roman Empire, though they were not clothed with the same official authority.

Grotius' "De Jure Belli et Pacis."—Those given by Grotius have been translated by the late Advocate de Bruyn, of the Cape and Transvaal Bars, and are of great value, illustrated as they are by Mr. de Bruyn's admirable notes of modern decisions in the Courts of South Africa. Grotius, whose real name was Hugo de Groot, was born in 1583 and died in 1645. Part of his life, as every one knows, was spent in prison, and still more of it in exile in foreign countries on account of his political and religious opinions. For many years he held a diplomatic post in Paris as the representative of Sweden, but his fame rests on his genius for law, which found expression specially in two great works, one on international law called *De Jure Belli et Pacis*, and the other *An Introduction to the Jurisprudence of Holland*. With regard to the first of these works it is unnecessary in any cultivated audience to say much, nor does it bear directly on the subject of this lecture, but I cannot resist quoting the opinion of such an authority as Hallam, who said:

> The publication of *De Jure Belli et Pacis* made an epoch in the philosophical and almost in the political history of Europe. . . It may be considered as nearly original in its general platform as any work of any man in an advanced stage

of civilisation can be. It is more so perhaps than the works of Montesquieu and Adam Smith.

Mr. Justice Wessels, of the Transvaal Bench, to whose writings in *The Cape Law Journal* I have been greatly indebted for much information about Roman-Dutch Law, has described the object of Grotius in writing his celebrated work as being "to stem the light-hearted manner in which one Christian nation made war with another," and to show that "in the same way as the individual owed to God a duty not to ill-treat his fellow man, so each State owed a like duty towards other States."

A higher object to work for or one more difficult to achieve can hardly be conceived: and a glance round the civilised world during the last ten years, not excluding our own country, would show what room there is still for the inculcation of the ideas of Grotius. At the same time the increasing number of international disputes settled in recent times by arbitration instead of by war shows that Grotius did not write in vain.

Well, it was the man possessed of the genius and permeated by the high ethical ideas which produced the *De Jure Belli et Pacis* who, in prison and with little access to books, wrote the treatise on Roman-Dutch law which has been the bed-rock authority for the law of the Netherlands during the two centuries of their greatness, and is still the leading textbook wherever the Roman-Dutch law prevails.

Real genius generally knows its own worth, and Grotius' own estimate of the value of the book, its character, and object may be gathered from a pathetic letter he addressed in exile to his children, which was intended as a preface to the book. I extract a few sentences because they give a vivid picture of the man and his mission:

My dear Children,

Some of you were with me in the prison at Louvenstein: others have, no doubt, heard about it. God knows how unjustly I was placed there, and some of my published writings show it. Whilst there I passed the wretched time with such matters as have always deeply interested me, viz. God's word, and other honourable studies . . . I leave you this work containing instructions in the law prevailing in Holland. In its composition I have been careful to deal with the whole subject in proper order, and I hope I have succeeded as well as Justinian in his *Institutes*. I have also taken great care to express the subject-matter in its proper terms, a matter often neglected by lawyers. . . . In this work . . . I have used our mother tongue, and sought to honour it, and to show that this subject can be very well explained in that language. . . .

With respect to the Roman law I have inserted here what is in use with us, not only such as has been taken out of the *Institutes* of Justinian, but also what has been gathered from other law books. To this I have added our own law so far as I was acquainted with it in the old *handresten* judgments, and other precedents.

There is one matter, however, which I regret, and that is that when I wrote this work I had but few books and little assistance. . . Seek, therefore, to come to

know experienced lawyers in order to add here and there where this work falls short.

Accept this work in the meantime as a legacy, inasmuch as, with great injustice, the other means which I should have left you have been taken from me.

Hold God before you and know that He loves justice.

Your affectionate father,
HUGO DE GROOT.

Voet, Van Leeuwen, and Van der Linden.—The greatest writer on Roman-Dutch law after Grotius was John Voet, who, however, adopted the old system of writing a commentary on the Pandects or Digest of Justinian instead of following the example of Grotius and writing an original work. The commentary, which is a mine of legal wealth, was published towards the end of the seventeenth century, and dedicated to our William III., and has placed its author in a position in the hierarchy of Roman-Dutch jurists second only to Grotius. But it is written in Latin, instead of Dutch, and only partially translated; and for that reason, and on account of its voluminous character, it has not been in such popular use as the works of several other jurists whose names I shall now mention.

These jurists drew their inspiration from Grotius, and were to a large extent commentators upon his work. Two of the best-known ones imitated Grotius in writing in Dutch, and gave to their treatises the same form and character as that of Grotius' book. The two I allude to were Simon van Leeuwen, who was Assistant Registrar of the Supreme Court of Holland about 1670–1680, and whose work is entitled *Commentaries on the Roman-Dutch Law* and John Van der Linden, whose *Institutes of the Laws of Holland* is the most modern authority we have on Roman-Dutch law, having been published as late as the year 1806. He, therefore, treats of the law down to the beginning of the nineteenth century, when it was superseded in name, though not in substance, by the Civil Code of Napoleon and other Codes founded upon it.

Other great jurists whose names ought not to be omitted are Groenewegen, Matthœus, Bynkershoek, Huber, Van der Keessel, who wrote a series of theses on the work of Grotius, and Pothier, though not a Dutchman. Undoubtedly, however, in South Africa, which is now the home, the abiding and increasing home, of Roman-Dutch law, the four writers who hold the field in priority to all others are Grotius, Voet, Van Leeuwen, and Van der Linden.

I have alluded to these writers as having written either in Dutch or in Latin; but I ought to mention that the works of three out of the four have long been accessible to us in good English translations. Grotius, Van Leeuwen, and Van der Linden have each been translated twice: the more recent translations being those of Grotius by the present Chief Justice Maasdorp, of the Orange River Colony Supreme Court; of Van der Linden by Sir Henry Juta, one of the leaders of the Cape Bar; and of Van Leeuwen

by Mr. Justice Kotze, late Chief Justice of the Transvaal, and now a judge of the Supreme Court at Cape Town. Mr. Justice Kotze's Van Leeuwen is enriched by copious notes dealing with modern decisions in South Africa, and the amendments caused thereby in the old Roman-Dutch law; and any student who will read that book and Mr. de Bruyn's translation of Grotius' *Opinions*, with the notes thereto appended, will find himself well abreast of the system of Roman-Dutch law as it is administered to-day in the existing Courts of the British Empire.

Roman-Dutch Law in South Africa.—That law is not in all particulars the same as the Roman-Dutch law originally brought by the Dutch settlers to South Africa, nor even as the law left by them in 1806 when the country became British. It has been modified and altered in two ways—(1) by the customs of South Africa, and (2) by the local legislation. The extent to which this has taken place may be gathered by reading a judgment of the Cape Supreme Court delivered in 1891 by the Chief Justice, Sir Henry de Villiers, in the case of *Seaville* v. *Colley* (9 Juta's Cape Reports 39), and an article written by the same high authority in the June number of the Journal of the Society of Comparative Legislation for the year 1901.

In regard to local legislation it will be sufficient to say here that in that way the commercial and company law of this country, as well as the law relating to evidence, has been introduced almost *en bloc* into South Africa. With regard to the operation of early Dutch legislation and local South African customs the Chief Justice said in the judgment I have mentioned:

> The conclusion at which I have arrived as to the obligatory nature of the laws in force at the date of the British occupation in 1806 may be briefly stated. The presumption is that every one of these laws, if not repealed by the local Legislation, is in force. This presumption, however, will not prevail in regard to any rule of law which is inconsistent with South African usages. The best proof of such usage is furnished by an unoverruled judicial decision. In the absence of such decision the Court may take judicial notice of any general custom which is not only well established, but reasonable in itself. Any Dutch law which is inconsistent with such well-established and reasonable custom, and has not, although relating to a matter of frequent occurrence, been distinctly recognised and acted on by the Supreme Court, may fairly be held to have been abrogated by disuse.

In Ceylon and in British Guiana, British mercantile law, British or Indo-British criminal law, and the British laws of evidence have been introduced by legislation.

But in all the colonies there remain not only the broad main principles, but in particular the admirably simple system of the Roman-Dutch law for the sale, transfer, and mortgage of real property. Movable and immovable property are treated as the same for practical purposes, and the sale and purchase of land is as easy and almost as inexpensive as the sale and purchase of a horse. Mortgages are treated as what they really are, charges to secure debts and not make-believe conveyances. Like the titles to the

land itself they are open to the inspection of all the world at the Deeds Registry. They are operative only so far as is necessary to satisfy the debt they secure, and then only so far as the Court sanctions, and after that sanction has been formally granted. Again, in regard to the important subjects of marriage, divorce, wills, trusts, and the devolution of property in intestacy, the principles of Roman-Dutch law remain in force and differ widely from the law of England.

Spread of Roman-Dutch Law to New Colonies.—What, however, gives special importance to the step taken by the University of London in offering education in Roman-Dutch law is the fact that, as the area of the British Empire extends, the knowledge of that law becomes more necessary for lawyers from England who go in increasing numbers to practise in the new Colonies.

Since I myself was practising in South Africa the British dominions there have been extended by the addition of the Bechuanaland Protectorate, comprising 275,000 square miles; of Rhodesia, comprising upwards of 300,000 square miles; of the Transvaal and Orange Free State, comprising another 160,000 square miles, not to mention such "unconsidered trifles" as Zululand, Pondoland, and Swaziland. In all these vast territories Roman-Dutch law has been introduced to a greater or less extent, and in most of them Courts have been established from which appeals come, and are likely to come in increasing numbers, to the Judicial Committee of the Privy Council. At the same time students desirous of being called to the Bar here for the purpose of practising in the new territories come in greater numbers too. They hope to obtain a legal education which will fit them for their future profession and at the same time clothe them with the prestige of membership of what surely should be an Imperial Bar. But—

the hungry sheep look up and are not fed.

They may pay their fees and eat their dinners, and plunge into the fascinating intricacies of English real property law; but in the law from the knowledge of which they hope to gain their bread-and-butter they get no instruction and no examination. It is true that there is a rule that a student may, at the discretion of the Council of Legal Education, substitute as a subject for examination Roman-Dutch law for English real and personal property; but as he is provided with no instruction by which to prepare himself for examination, this rule would seem to be one intended by the Council to be "more honoured in the breach than in the observance." It is true, also that some twelve years ago a short course of lectures on Roman-Dutch aw was given by the Inns of Court; but as the subject was not admitted as one for the Bar Examination the attendance was small, and the lectures were dropped.

Thinking Imperially.—These are days when we are being constantly exhorted to "think imperially," most admirable advice when properly

understood—understood, for instance, as the Great Antonine Emperors understood it at the most glorious period of the Roman Empire. Marcus Aurelius has left it on record that to "think imperially" in his time was "to aim at an equal commonwealth based on equality of right and equality of speech, and of imperial rule respecting first and foremost the liberty of the subject" (Marcus Aurelius i. 13). Justinian understood it three hundred and fifty years later as a magnificent conception of a universal system of law of which the breadth and justice of its principles should attract all peoples to seek its protection. "Thinking imperially" should surely lead to teaching imperially; but it can hardly be said that such a result has been achieved when the one body which has had the monoply of legal education and the sole right in this country to open the door to the practice of the legal profession has not yet got beyond the conception of a Bar and a law confined to the limits of England and Wales. The position appears the more anomalous when the claim is made and acted upon that a call to the English Bar shall qualify a man to practise anywhere and to give him a right, without further examination, to blossom out into either a judge or an advocate in any part of the Empire, whether the law in force there be Roman-Dutch, French, Spanish, Mahommedan, or Hindoo. It is surely obvious that if this privilege is to be maintained, and if the Privy Council is to continue as the supreme Court of Appeal for the Colonies, there must be a wider purview of legal education taken at the heart of the Empire. The University of London, by establishing lectures in Colonial and Indian law, is striving to show our Colonies that it has embraced this wider purview; and though I fear that little of the wealth of Johannesburg has found its way within the University walls, yet the University does mean to extract from the most recent additions to our Empire some of that pure and permanent gold which is to be found enshrined in a system of law based upon principles of eternal justice. It has been finely said of the Roman law that it held its own everywhere "not by reason of the empire, but by the empire of reason" (*non imperii ratione sed imperio rationis*). May not a wise incorporation of its noblest elements into British law earn for posterity the same high praise for the legal system of the British Empire?

DIVORCE AND "PUBLIC ORDER" IN ITALY.

[*Contributed by* SIGNOR TORQUATO C. GIANNINI, *Avvocato.*]

ONE of the most important points of international law which has not been treated *in extenso* in this paper, as far as Italy is concerned, regards the validity of divorce pronounced by a foreign tribunal (cf. vol. xii. p. 498, and vol. xiii. p. 107).

According to our Civil Code (Art. 6), status is regulated by national law. Therefore in Italy, though divorce is in no case permitted, foreign people whose own (personal) law admits divorce ought to be entitled to bring an action for divorce before the Italian Courts, and for the same reason divorce granted by a foreign tribunal ought to be recognised as effective in Italy. But there is in the same Code another statute by which laws, contracts, and judgments of a foreign country which are opposed to what is considered to be public order in Italy are altogether illegal and void (Art. 12). Is divorce opposed to public order in Italy? There is a great divergency in the opinions of eminent jurists and of the Courts. As the legal tie of marriage is indissoluble for Italian married people, it would certainly hurt the moral feelings of citizens if such people could get a decree of dissolution of marriage from an Italian Court, and people who were known as married could legally contract a new marriage. There is no doubt, said the Supreme Court of Turin (February 23, 1873), that public order requires marriages not to be dissolved but by death. On the other side, it is argued that in many civilised countries, even Catholic, divorce is permitted, though on different grounds. So it cannot really be said that divorce is in itself opposed to public order. In several cases Italian tribunals have granted a decree of divorce to foreigners who had applied for it (Appeal Ancona, March 12, 1884; App. Milan, October 13, 1891). But most of the Italian jurists have made a distinction between a petition presented to an Italian Court for dissolution of marriage and a petition for the recognition of a foreign judgment of divorce, which has to be executed in Italy. Professor Jusinato, Under-Secretary of State for Foreign Affairs, does not approve of such a distinction, but it is self-evident that a great difference exists between the two cases. When a Court agrees to recognise a foreign judgment and gives effect to it (*exequatur*) nothing is done more than to acknowledge an accomplished

fact. The petitioners are already divorced, and the *exequatur* is only required for special purposes, which are the consequence of a legal status which cannot be changed or disowned. Italian law cannot extend its powers to restraining the rights of alien subjects; their freedom, following divorce, is a *subjective right*, a *jus quæsitum.* Public order would be offended by the infringement of it, if the same person could be considered, according to the country where he resides, married and not married at the same time. It does not matter if a husband and wife are both of foreign extraction or if the husband alone is a foreigner, because according to Italian law the wife is a subject of her husband's country. It *does not matter* also if the marriage ceremony has been *performed in Italy or abroad*, provided that the law under which the husband lives allows divorce, and the divorce be pronounced according to this law and by a competent Court.

This conclusion would seem to have only a theoretical importance, because of the limited number of foreigners who need to plead before the Italian Courts for divorce and for the settlement of their affairs in Italy. But on the contrary, it has given to many Italian husbands and wives the opportunity of eluding in a legal way the national law. Italy, as before said, has no law for divorce; judicial separation alone is permitted. A Bill has been discussed in Parliament (November 25, 1902), but for political reasons it was never voted, and perhaps if a vote had been taken it would have been rejected. There is in the mind of the best part of the citizens something like an abhorrence of the dissolubility of marriage, and times are not yet ripe for the reform. Therefore persons of means often emigrate to a foreign country (Switzerland, Hungary, etc.) where divorce is admitted, and they become naturalised subjects of that country. After a while they bring an action for divorce, and as the defendant makes no real defence, and the judgment very often goes by default, they are divorced in a comparatively short time. When there is no remedy against the decision, these divorced persons come back to Italy, claim a recognition of the judgment of divorce, and ask for permission to resume their Italian citizenship. Such peculiar pilgrimages began several years ago; but in 1898, when some well-known people got divorced by such means, there was in Italy a kind of reaction in public opinion. It was undesirable that people who could bear the high cost of the residence abroad, and give up, if necessary, their Italian citizenship, could obtain what for others is impossible. It was no longer true that *la loi est égale pour tous.*

Senator Gabba, alleging that *fraus omnia corrumpit*, would assume that people who emigrated and became citizens of another country only in order to frustrate the action of their national laws and take advantage of a different law in another country must be considered real aliens or under the rule of a foreign State. They must, in the eyes of the national judges, be considered and treated like natives. This may be regarded

as a valid argument from the point of view of equity, but from the legal standpoint there is no possible fraud in seeking a change of citizenship; and after the change has taken place the status of an alien is undeniable, hence the unavoidable validity of the divorce. The repression of the alleged fraud may be enforced in other ways—that is, the Government requested to grant the new citizenship may refuse the decree, or the Italian Government may refuse permission to reassume former citizenship to the subjects who have emigrated with a view to defeat the laws of their own country. This indeed has been the advice of the Council of State (October 17, 1900).

Several Courts of Appeal, having been requested to recognise a foreign judgment of divorce for personal as well as for patrimonial effects, have granted the *exequatur*. Some of these judgments concerned Italian women married to alien husbands (App. Milan, October 13, 1891; App. Torîn, December 9, 1893; App. Roma, April 28, 1897; App. Palermo, September 15, 1900; App. Venice, 1903; App. Florence, November 14, 1905). Moreover, in one case the law binding the husband did not admit of divorce, so that he had been compelled to give up his citizenship for a new one (App. Milan, September 14, 1898).

Some other cases affected Italian people who had changed their nationality and become subjects of another country where divorce is permitted, for the purpose of obtaining a divorce (App. Modena, April 12, 1898; App. Venice, July 30, 1901, October 4, 1900, and September 10, 1902).

Two decisions of the Court of Cassation on the subject are worthy of peculiar attention. Spouses, married in Florence (Italian subjects), were divorced abroad, and claimed recognition of the foreign judgment. Their petition was rejected by the Court of Appeal, but the Supreme Court in Florence annulled the judgment (December 6, 1902) and ordered a new trial, on the ground more particularly that, according to the Italian Civil Code, foreigners who want to marry in Italy are required to present a certificate or a judgment (it may also be a decree of divorce) of the authorities of their country, from which it appears that the petitioner is not bound by another marriage.

The Court of Appeal of Lucca, to which the new trial has been assigned, has not yet delivered its decision (June 26, 1903). Should this Court be of a different opinion from the Court of Cassazione, the case would come before the Supreme Court in a plenary sitting.

The Court of Cassation in Turin, after several of the judgments above referred to had been given, annulled them (November 21, 1900). But as there was no request from the interested parties judgment was delivered in the so-called *interest of the law*, which means that it cannot have any practical results, and operates merely as a theoretical suggestion for the future to the Courts of Appeal. The Courts are, however, free to defend their own opinion; and in fact the decision of the Court of Turin has met with the disapproval of all the best students of

international law. The view of that Court is that a foreign judgment of divorce is not to be recognised in Italy because the marriage took place in Italy, and husband and wife in such a case are both supposed to subject themselves to the *lex loci celebrationis* (Art. 9, Civil Code). But it has been rightly remarked that parties marrying are not in the position of mere contracting parties, marriage being more than a mere contract (cf. quotation from Sir James Hannen, vol. xiii. p. 116 of this Journal), and the presumption concerning contracts is therefore not applicable to marriages. Besides, the right of divorce is a very personal one which a spouse cannot give up by consent or by choosing the place for celebrating the marriage, which comes to the same thing. The capacity of divorcing is only a side of a person's general capacity or *status*, and this capacity or status is to be considered not according to the *lex loci*, but according to national law. The conclusion we may draw is that tribunals and jurists are disposed to give effect in Italy to a divorce under a foreign judgment. We must also remember that when The Hague arrangements (June 12, 1902) were discussed in the Italian Parliament, Senator Gabba asked for an explanation of Arts. 6 and 7, which affect marriage contracted in a foreign country and by foreign people. The distinguished professor asked if it meant that people who had *in fraudem legis* become subjects of one of the contracting Powers could not obtain a divorce, but the reply was that this was a question of jurisprudence which had to be left entirely to the tribunals. Strange to say, the Senate seems to be less reluctant to admit the legality of divorce than the Chamber of Deputies, notwithstanding that the late Minister Zanardell had announced divorce to be one of the most important and urgent reforms.

LAW AND TAXATION IN NORTHERN NIGERIA.

[*Contributed by* Albert Gray, Esq., K.C.]

In our time Great Britain has annexed much territory in tropical Africa, but from an ethnological and historical point of view no addition to the Empire equals in interest that of the Haussa States, now known by the name of Northern Nigeria. The territory had been the sphere of the commercial and administrative operations of the Royal Niger Company, who acquired but slight hold over the native rulers. The murder of a European officer led to a punitive expedition, admirably carried out by Sir F. Lugard, and the fall of Kano and Sokoto in 1901 was followed by the extension of and a Protectorate administration over all the States. The area of the territory is estimated at 260,000 square miles, considerably more than that of France; the population is estimated at 9,000,000, though Dr. Barth in 1855 reckoned it at more than three times this figure. There are many and numerous Negro tribes, but the dominant races, the Haussas, Fulanis, and Bornuese, are of various Berber and Arab stocks.

Historically, Northern Nigeria is the eastern half of the great Hinterland of West Africa, which extends from the Senegal River on the west to Lake Chad on the east. This vast fertile belt between Lat. 10° and 17° N., watered throughout by the Niger and its tributaries, and bounded on the north by the Sahara, and on the south by the Coast strip occupied by the modern European settlements, was from at least the tenth century one of the great fields of Mahommedan civilisation. To the Arabs and Berbers it was "Negroland," by which name it has been known even to our own day. Mahommedan religion and culture reached Negroland partly, but to a comparatively small extent, from the Nile Valley, the Bornu race having probably immigrated from that region. But the stronger and more continuous currents flowed from the Atlas region, and these kept Negroland in close contact with the high civilisation of Moorish Spain. Islam made steady progress, sometimes by the aid of the sword, and generally through slavery and concubinage, among the Negro races best fitted for the adoption of a higher faith; and as a testimony of the elevating power of that faith, it may be confidently asserted that never has the Negro risen to so high a level as in this part of Africa. The Songhay Empire, the greatest of the

thousand years' history with which we are concerned, was a Negro empire, raised and consolidated by a Negro, though aided in counsel by white viziers, judges, and lawyers who had been educated at Grenada or Fez. There were, of course, great wars, tyrannies, and revolutions, but there were also long periods of peaceful development. Ibn Batuta, the greatest of all Arab travellers, who had visited every country in the known world from Morocco to China, enumerates the fine qualities of the people of one of these black kingdoms, among which were "the small amount of injustice, no people abhorring injustice as do the Negroes: the perfect security which is enjoyed throughout the country: the fact that the goods of strangers dying in the country are not confiscated: their devotion to the duties of religion."[1]

At the end of the sixteenth century the great Songhay Empire became enervated through long years of peace and fancied security. Then came an irruption of the Moors and a terrible period of disorder. The Moorish pashas could not be controlled from Fez; they declared themselves independent, and the result was that Negroland was closed to the world for upwards of three hundred years. The last revolution, and the one which now most nearly concerns the British Government, is that which brought the Fulanis into power at the beginning of the nineteenth century. Much doubt exists as to the origin of this race, whose first habitat in West Africa seems to have been the neighbourhood of the Senegal, and the learned still dispute as to whether they are of Phœnician, Egyptian, Indian, or Arab stock. Lady Lugard inclines to the view that they are Gypsies. Whatever their history, they were the ruling power in Northern Nigeria when the British took possession in 1901.

Those who may be tempted to know more of the Western Soudan, its states, races and dynasties, should not delay to read the wonderfully interesting story as told by Lady Lugard (*A Tropical Dependency*, 1905). Those who would estimate the problems with which our officers have to deal should read attentively the annual reports of Sir F. Lugard, chiefly those for the years 1902 and 1904. These authorities show that a great work of reconstruction lies before our Government. It may not be possible to restore Nigeria to the prosperity it enjoyed prior to the Moorish cataclysm of 1590-95, but the mischief done by the Fulanis during their century of ill-used power may to some extent be remedied. The greatest mischief, that of slave-raiding, of course disappears forthwith. The Fulanis also set law and judicial procedure at defiance. "The judicial system of the Fulanis," says Lady Lugard, "already founded on Mahommedan institutions, and adopted in the first instance by the conquerors, was allowed to fall into disuse. Courts continued to exist, but the alkalis who should have presided over them and dispensed justice according to Koranic law irremovable from their position as the judges of Great Britain, were either disregarded . . . or worse still, subjected to the authority of the emir's favourite

[1] *Voyages d'Ibn Batoutah*, Paris, 1879, tome iv. p. 421.

slaves, who decreed to their enemies inhuman punishments of their own invention." In all the Courts justice was bought and sold.

The judicial system inaugurated by Sir F. Lugard is not as yet organised in all its details. The ancient Mahommedan civil law will prevail, while the principles of the English criminal law will be gradually taught to the judges. There is a Supreme Court for the Protectorate, and, according to Indian precedent, the Residents and Assistant Residents are invested with judicial powers. The native Courts have extensive though limited jurisdiction; none are allowed to pass capital sentences except those of Kano and Sokoto, and in their case the approval of the Resident is required. As the administration gets into closer touch with the people, reports will no doubt be made from time to time as to the law and procedure in civil cases.

The Protectorate being composed of divers kingdoms and races, the subsisting modes of taxation were not uniform; indeed, they varied according to the rapacity of the rulers. The "Zakka," or tithe of corn, however, was almost universal. Next there was the "Kurdin Kasa," a land tax, in theory levied on pagans, who originally did not, but latterly did, pay the Zakka. Then there was a plantation tax levied on crops not subject to the Zakka. Fourthly there was the "Jangali," or cattle tax. There were other taxes levied on subordinate emirs and other holders of office, taxes on handicrafts and on trading, and finally death duties "complete enough," says Lady Lugard, "to satisfy the most Radical of European reformers."

What Sir F. Lugard has done is to merge all the agricultural taxes in one general assessment, communities being treated as the units. The assessment has been made by the officers of the Administration, but the collection is left to the district headmen, who are as far as possible the Fulani emirs; where they are not, the headmen collect and account to the emirs, who pay over one-fourth to the Government. All the other taxes, so far as it is desirable to continue them—for instance, those on traders, levied by traders' licences—are collected directly by and for the Government. Having regard to the comparatively recent ascendancy of the Fulanis, they have undoubtedly got the best of terms from their conquerors, but there can be no question as to the political wisdom of generosity so far as it secures the cordial adherence of a caste who might otherwise cause trouble. One can have little doubt that as the country develops it will be necessary for the Government to regularise and itself superintend the taxation of the individual. But let it be borne in mind that the total European staff for all departments of administration numbers only 400 men, of whom not more than 270 are in the country at one time. The safest line in all cases of annexation is the adoption and improvement of existing methods, and this is the line which Sir F. Lugard has wisely taken.

REVIEW OF LEGISLATION, 1904.

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REVIEW OF LEGISLATION, 1904.

INTRODUCTION.

[*Contributed by* Sir Courtenay Ilbert, K.C.S.I.]

The most interesting chapter in the colonial legislation of 1904 is the Conciliation and Arbitration Act of the Australian Commonwealth. It marks what Mr. Sidney Webb would consider a step in advance of the Trade Disputes Bill, now before the English Parliament. The English Bill recognises industrial war as a necessary incident of the relations between capital and labour, and strives to equalise its conditions by removing legal disadvantages to which labour is subject. The Australian Act prohibits and penalises industrial war, and substitutes State control. Its leading section declares that "No person or organisation shall, on account of any industrial dispute, do anything in the nature of a lock-out or strike, or continue any lock-out or strike. Penalty, one thousand pounds."

The Act sets up a Commonwealth Court of Conciliation and Arbitration having jurisdiction for the prevention and settlement of industrial disputes. The Court proceeds by way of conciliation with a view to amicable agreement, but in default of amicable agreement may make an equitable award, breach of which may be punished summarily. The Court may prescribe a minimum rate of wages, and may give directions as to cases in which members of trade organisations are to have preference in employment. In every case the Court is to act according to equity, good conscience, and the substantial merits of the case, and is not to be bound by any rules of evidence, but may inform its mind on any matter in such manner as it thinks best. Exceptional qualities are required for the successful exercise of jurisdiction conferred in such extensive and indefinite terms. Let us hope that they are to be found in Australia.

Queensland has imposed a progressive income tax. Incomes under £100 are exempt, except in the case of companies and absentees. In other cases a distinction is drawn between income derived from personal exertion and income derived from the produce of property, the maximum rate being 8*d.* in the £ in the former, 1*s.* in the £ in the latter case. Tax on the income of companies and of absentees is charged at the uniform rate of 1*s.* in the £.

Victoria and South Australia have passed "Closer Settlement" Acts enabling the State to acquire private land by agreement or compulsion

for the purpose of erecting farm allotments, allotments for workmen's homes, and allotments for agricultural labourers.

Tasmania has, under an "Act to levy a tax upon persons in proportion to their means or ability," imposed a tax upon occupiers and sub-occupiers of property and upon lodgers not liable to be taxed as occupiers or sub-occupiers. The tax is to be paid upon the "taxable amount," which is, in the case of an occupier, the annual value of the property occupied, and in the case of a lodger, the annual value of board and lodging. The rate of the tax is graduated. Persons paying income tax are exempted. Tasmania has also recognised the right of women to practise as barristers or solicitors.

The most important of the Canadian Acts is a Militia Act passed by the Dominion Parliament, which imposes liability to service on all able-bodied persons between eighteen and sixty, subject to certain exemptions. The Act divides the persons liable to serve into four classes: (1) those between eighteen and thirty who are unmarried or widowers without children, (2) those between thirty and forty-five who are unmarried or widowers without children, (3) those between eighteen and forty-five who are married, or widowers with children, (4) those between forty-five and sixty; and provides that the male population shall be called on to serve in this order. The period of service in time of peace is three years, and the permanent force is limited to 2,000 men. If enough men do not volunteer, the quota is made up by ballot.

The Cape Parliament has passed a comprehensive Workmen's Compensation Act, applying to persons employed in any trade, business, or public undertaking within the Colony and its territorial waters. It does not extend to domestic servants, messengers, errand-boys, or to those employed in agriculture, horticulture, or forestry, or to persons in the military or naval service of the Crown, but it applies to other Crown employees. The provisions as to the amount of compensation and the machinery for assessing it deserve comparison with those of the English law.

The Cape has also passed an important Education Act which supersedes the previous system of grants in aid administered by school committees, and divides the Colony into school districts each with a school board. All schools under a school board are to be undenominational. The school boards are to see that all European children between seven and fourteen are educated. The education of coloured children is not generally compulsory, but may be made compulsory by the school board where there is sufficient accommodation.

Racial discriminations have left an unpleasant trace on Natal legislation. There is an Act which punishes with whipping cattle-stealing by natives; another which enables town councils to establish separate locations for natives and to pull down native sleeping-huts or dwellings in the town; and a third which requires every native servant to furnish himself with a pass, which must be produced before he is engaged for service and which must be renewed by a magistrate whenever he moves from the land of one private owner to that of another.

A "Proclamation" for Northern Nigeria lays down a general system of land revenue taxation. Every chief has to pay to the Resident of the province one quarter of the amount received by him during the preceding twelve months in respect of tribute, tax, or rent, and every community has to pay the Resident a sum equal to one-tenth of the annual value of the lands occupied or enjoyed by them in the province.

Mr. Albert Gray gives an interesting account of the system of legislation and jurisdiction in the three great Protectorates of British Central Africa, East Africa, and Uganda, the administration of which has been recently transferred from the Foreign Office to the Colonial Office. A Court of intermediate appeal between the High Courts of these Protectorates and the Privy Council was established in 1903 and sits ordinarily at Zanzibar. It is curious to note that marriage with a deceased wife's sister, after having been legalised for two years in East Africa and Uganda, was again declared illegal by an Ordinance of 1904. The Foreign Office mind seems to have vacillated on this subject.

British Guiana has passed a Married Persons' Property Ordinance, which substitutes for the Roman-Dutch common law of the Colony the English law as to married women's property. Incidentally the new Ordinance removes the incapacity of women to enter into the contract of suretyship and it does so by formally enacting that the *Senatus consultum Velleianum* and *Authentica si qua mulier* shall no longer be in force in the Colony.

Roman civilisation and African barbarism meet each other in the West Indies. Whilst British Guiana was repealing a law made by the Roman Senate, the Leeward Islands found it necessary to pass an Act against the practice of *obeah* or African witchcraft.

In another hemisphere the contact of English and Mohammedan institutions has produced some odd results. The Residents of the Federated Malay States appear to have been stirring up the chiefs of these States to legislative activity, and in 1904 Perak alone passed no less than twenty-nine enactments in the orthodox English form. Among them is a Mohammedan Laws Enactment which applies to Mohammedans only. It imposes a fine of 50 cents for the offence of failure to attend the mosque and hear the *imam* on Fridays. But the duration of the compulsory sermon is limited to one hour. It also imposes a fine of $25 for teaching religious doctrine without written permission from the Sultan, and for teaching false doctrine, except in one's own family.

The Indian legislation of 1904 was important and interesting, but there is no space for comment on it here.

The Journal is indebted to Mr. Brunyate for a very instructive account of the new Penal Code and Code of Criminal Procedure which were passed for Egypt in 1904, and of the steps which were taken in the same year for simplifying the complicated financial arrangements of the country by amending the law as to the Public Debt.

The only strictly foreign legislation which has found a place in this year's review is that of Sweden, which is summarized by Mr. Nils Setterwell.

FOREIGN.

1. EGYPT.

[*Contributed by* W. E. Brunyate, Esq., *Khedivial Counsellor.*]

Laws of General Public Interest—22.

Agriculture.—Two Laws (Nos. 9 and 10) deal with the protection of agriculture from insect pests.

In April there occurred a very widespread invasion of locusts. The existing Law (of 1891) authorised the calling out of all able-bodied men to aid in the destruction of the insects. By Law No. 9 (of temporary application only) further power was taken to plough up affected lands or (when planted with certain valuable crops) to cause them to be thoroughly hoed. Power was also taken to requisition for the purpose any agricultural implements or animals employed in agriculture.

Law No. 10 prohibits the importation of American cotton-seed. It is expressed to be based on a report presented by the Khedivial Agricultural Society, and is intended to prevent the introduction of a new insect which has done much damage in America.

Civil Procedure.—Law No. 11 raises the limit of non-appealability in civil suits before the Native Tribunals (other than suits relating to land) from £E10 to £E20. The change was largely based on the rise in prices and wages during the last twenty years. As regards suits relating to land, the value of the suit is calculated by reference to the land tax and not by reference to the sale value: so that, as was pointed out by the native Legislative Council, the real limit of non-appealability in such suits has, with a fixed land tax and a large increase in the price of land, already increased in a higher proportion than that proposed.

Criminal Law.—Law No. 3 promulgates an amended Penal Code for the Native Tribunals, which had been in preparation for some five years.

The Penal Code of 1883 was modelled on that of the Mixed Tribunals, which was itself a hastily compiled and badly drafted adaptation of the French Penal Code as it existed in the 'seventies. It was adopted (probably rightly) in 1883 on the advice of Lord Dufferin, on the ground that such

legal education as was then possessed by Egyptians had been acquired in France. It remained true until a very recent date that legal education in Egypt was essentially French. Any complete recasting of the Code at the present time would therefore have been ill-advised. The method adopted was that of amending those parts of the Code which worked unsatisfactorily in practice, drawing freely upon the Indian Penal Code and to a less extent on those of Belgium and Italy: large portions of the Code, admittedly defective but of infrequent application, were left practically unrevised. The general effect of the revision is to create a distinctively Egyptian Code which will require to be studied without slavish reference to precedents in foreign countries—a fact which should be distinctly beneficial to Egyptian legal education.

The employment of portions of the Indian Penal Code as a precedent had interesting results from the point of view of drafting. The drafting was, in fact, done in French, the Arabic text being a translation. But English legal drafting, even in the comparatively simple form in which it occurs in the Indian Code, lends itself with difficulty to translation into idiomatic legal French. Simplification of phrasing was therefore repeatedly necessary; and, without expressing any opinion on the manner in which the particular piece of work was done, it is submitted that what is in effect bi-lingual drafting has a marked tendency towards the omission of all superfluous verbiage.

Part I. of the Code ("Preliminary Provisions") was subjected to an exhaustive revision, and probably goes as far in departing from the original model as would have been consistent with the habits of thought of the average magistrate. Art. 1 lays down that the Native Tribunals are Courts of general jurisdiction, subject to the exceptions arising from law, treaty, or usage. Arts. 2-4 deal with offences committed outside Egypt, on the general lines of the French, Belgian, and Italian Codes. The list of substantive penalties (enumerated in Arts. 9-11) has been simplified by the omission of perpetual detention, exile, revocation and deprivation of civil rights (the last named of which, although enumerated as a substantive penalty in the old Code, was never so used). The French distinction between correctional and contraventional imprisonment or fine is suppressed, as a historical survival now become meaningless. At the same time, all minimum penalties for misdemeanours or police offences are suppressed. Under the old Code, such minima nominally existed, but ceased to be binding on the judge if he found extenuating circumstances. A fear somewhat generally expressed that their formal suppression would lead to a general reduction in sentences has proved wholly groundless. Arts. 33-8 lay down the general principle that penalties shall be cumulative within specified limits, so departing from the French rule of non-cumulation. By way of exception, Art. 32 lays down that several offences committed with the same criminal intent and so connected one with another as to constitute

a single transaction shall be considered as constituting a single offence—a provision which is in substance Indian. Arts. 38-43 in effect reproduce the Indian provisions as to joint acts and as to abetment. Arts. 48-51 materially simplify the rules as to recidivism, but erect into crimes simple theft and certain other misdemeanours, when committed by old offenders with specified antecedents. Arts. 52-4 permit of sentences of imprisonment of under a year passed on first offenders being suspended, on condition of good behaviour during five years. Art. 58, as to public servants who exceed the limits of their powers, renders superfluous a large number of provisions as to special offences in the old Code. Arts. 59-67 deal with juvenile offenders. Whipping is introduced as a penalty for boys and has been largely used by judges. A new power to entrust juvenile offenders to their parents, with an undertaking for good behaviour, has been less freely used. Reformatory sentences are admitted as an alternative penalty upon conviction: the old (French) rule was that confinement in a reformatory could only be ordered when a juvenile was acquitted as having acted without discernment. Finally, the penalties of death and penal servitude cannot be imposed on offenders between the ages of fifteen and seventeen years.

The special part of the Code was subjected to much detailed, but no great general, revision. Notably, the whole of the penalties for misdemeanours and police offenders had to be reconsidered in connection with the omission of minimum penalties, and police offences were re-classified by subject, instead of, as in the old Code, by penalty.

The most noteworthy fact in this connection is that the sub-Committee of the Legislative Council, presided over by the late Grand Mufti, which examined the draft pressed for substantial extensions of the process of revision. As a result of conferences with the sub-Committee, additional chapters or articles, mainly on Indian lines, were introduced dealing with criminal trespass, the right of self-defence, offences against religion, and blackmailing. Several of these provisions involve departures of principle which would have been introduced with considerable hesitation had it not been for this form of native support.

Criminal Procedure.—Law No. 4 promulgates an amended Code of Criminal Procedure. As in the case of the Penal Code, the revision was only an instalment. It is a mistake to suppose that Egyptian criminal procedure has ever borne any very close resemblance to the procedure in France. There were from the beginning fundamental differences between the Procedure Code and its French prototype. But the essence of criminal procedure is intimately connected with the traditions of the magistracy, and a corps of magistrates with fixed traditions can scarcely be said to have come into existence prior to the time at which the late Sir John Scott gave vitality to the Courts by creating single-judge tribunals with extensive civil and criminal powers. That change was very shortly followed by the practical suppression of the *juge d'instruction* in favour of enquiries by the Parquet,

and since 1895 the merits or demerits of criminal procedure have no longer been fairly imputable to its French origin. All that can be said of the present procedure is that it is pretty certainly transitional, and that its future development must depend largely on the degree of capacity which it proves possible to evoke in the magistracy.

In the meantime, a good deal of the formalism of French procedure in detail had been reproduced in the Egyptian Code, and the magistracy had shown a decided tendency to mistake formalism for spirit. The inconveniences resulting from such formalism it was the special object of the revision to mitigate.

Appeal, which was suspensive of execution, was being freely used as a dilatory measure. Sentence of fine is, under the new Code, always enforceable notwithstanding appeal, and sentence of imprisonment is enforceable unless bail (which is sometimes of right and sometimes in the discretion of the Court) is given.

Service upon an offender sentenced by default of the entire judgment of conviction is replaced by service of an extract thereof; and failure to appear on the hearing of opposition to a judgment by default is effectively made a bar to appeal.

Liability to costs was, under the old Code, an automatic result of conviction; and the costs, as fixed by the tariff, were on a high scale relative to the means of the bulk of the population. At the same time, fines were, in fact, habitually high, and, as the scale of imprisonment in default of payment of fine and costs was extremely low, few fines were paid. Under the new Code, the scale of imprisonment in default is three times as severe; costs are in the discretion of the Court, and judges have been invited (by instructions) to fix fines at an amount which can be paid or to pass sentence of imprisonment.

Much of the rest of the revision consisted in the incorporation in the Code itself of some twenty outside Decrees.

Law No. 8 authorises the creation of tribunals in the Markazes (subdivisions of provinces) in which the prosecution in petty offences can be conducted by the police without the intervention of the Parquet. Such tribunals were everywhere instituted by the end of January, 1905. They are for the most part served by itinerant judges, and largely reduce the inconvenience for witnesses and others of appearing before a criminal Court. The introduction of concurrent jurisdiction on the part of summary and Markaz tribunals is a departure from French practice which should lend itself to considerable extension. Power is taken to confer jurisdiction in small civil cases on any Markaz tribunal, but questions of staff have prevented the power from being used except in special cases.

Law No. 15 extends the rules of the new Code of Criminal Procedure as to execution to sentences passed by administrative Courts, and replaces a considerable body of rather confused legislation.

Law No. 5 embodies consequential amendments in the Organic Decree of the Native Tribunals.

Law No. 6 is a consolidating enactment as to the circumscription of the Central Tribunals.

Law No. 7 is a Statute Law Revision Act repealing some hundred Decrees, most of which were rendered obsolete by the revision of the Codes. With the repeals scheduled to the Law as to the Public Debt, mentioned later, something more than one-eighth of the existing Statute-book is formally repealed.

Debt.—Law No. 17, as to the Public Debt, which was scheduled to the Anglo-French Agreement of 1904, and came into force on January 1, 1905, marks the close of the epoch of international control over Egyptian finance which began when Ismail made default in April, 1876.

The complicated nature of Egyptian financial arrangements was admirably brought out in the chapters devoted to the subject in Lord Milner's *England in Egypt*; and those chapters have since served as a quarry from which less eminent writers on Egyptian affairs have been accustomed to extract much of their material. It should, however, be remarked that Lord Milner's account described the situation in 1892, and had long ceased to be true in fact at the date of the Anglo-French Agreement. Further, his object would appear to have been to make clear, for political purposes, the inconveniences of the system as it then existed rather than to explain how they had arisen.

The confusion and anomalies of Egyptian Debt legislation as it existed in 1904 and its lack of conformity between theory and fact were only, in reality, an illustration of the necessary consequences of legislating as to a given subject-matter at different periods and from different points of view without any attempt to bring the form of the law into correspondence with its substance by means of consolidation. The distinguishing feature of the case was, merely, that in the short space of thirty years a change had been wrought in the financial situation of Egypt comparable with the social and economic changes, material in the case of most legislation which it ordinarily requires centuries to produce.

To understand the effect of the new Law, it is necessary to explain the manner in which pre-existing legislation was actually working at the date of the Anglo-French Agreement. It may be remarked that such legislation extended to some sixty Decrees, none of which had been formally repealed, and included four comprehensive settlements of the debt question, those of May, 1876, November, 1876, 1880, and 1883. The Decrees in question were scattered over twenty-four volumes of Laws and Decrees, practically unindexed.

Omitting the unimportant Daira and Domains Loans, there existed three separate debts—the Guaranteed Debt created in 1883, and bearing interest at 3 per cent.; the Privileged Debt, bearing interest (since the conversion

of 1890) at 3½ per cent.; and the Unified Debt, bearing interest at 4 per cent. A fixed annual sum was (and remains) affected to the service of the Guaranteed Debt and provided a surplus for amortisation: the same debt was further guaranteed by the Great Powers. The three debts were secured, in the order above indicated, upon identical securities. An international commission known as "the Caisse de la Dette" was charged with the administration of all three.

Certain revenues, known as "the affected revenues," had been affected by the settlements of 1876-80 to the service of the debt and were paid direct to the Caisse de la Dette. The Privileged Debt was, under those settlements, provided with a sinking fund; and any surplus of the affected revenues was employed in the amortisation of the Unified Debt. The Government was unable to legislate so as to reduce the affected revenues without the consent of the Caisse.

By the settlement of 1885 (as slightly modified in 1888), the Privileged Sinking Fund was suppressed; and the sum ultimately available for amortisation of Unified ceased to depend on the available balance of the affected revenues, but was fixed at half the excess[1] of the gross revenues of the Government of every kind over the aggregate of the sum required for the fixed debt service, together with a sum (varying with the railway receipts, but otherwise fixed) which was adopted by the London Convention of 1885 as a reasonable estimate of ordinary administrative expenditure. As from the end of the financial year the remaining half of such excess (whether arising from affected or non-affected revenues) was at the free disposal of the Government, and the actual administrative expenditure of the Government was not in any way limited by the estimate of 1885.

It is at once obvious that the resettlement of 1885 in effect abolished the "affectation" of revenues under the settlement of 1876-80. The only remaining effect of "affectation" was that the unemployed balance of such revenues awaited the annual taking of accounts between the Government and the Caisse in the coffers of the latter, while the unemployed balance of the unaffected revenues (had there been one) would in the meantime have been kept in the Government Treasury. Hence the necessity of the Caisse's consent to any modification in the affected revenues became an anomaly. The International Railway Board, created in November, 1876, when the railway revenues were made payable direct to London for the service of the Privileged Debt, became equally anomalous, even if it had not become so in 1880, when those revenues became payable, along with the other affected revenues, to the Caisse de la Dette.

In 1888, the annual sum which, as above mentioned, would have been available under the 1885 settlement for the amortisation of Unified was

[1] A small portion of this sum was affected to the more rapid amortisation of the Guaranteed Debt.

made payable into a Reserve Fund, administered by the Caisse, and amortisation was only to be resumed when the Reserve Fund reached £E2,000,000. The Caisse was at the same time given power to make grants to the Government from the Reserve Fund for extraordinary expenditure.

The provisions as to the Reserve Fund are those the practical working of which had come in 1904 to differ most widely from what was originally intended. In theory, the rule was amortisation, subject to a reasonable reserve being maintained, and extraordinary expenditure was subject to a strict control by the Caisse. In fact, with Unified at 108 and more than a million sterling payable annually into the Reserve Fund, amortisation would have been prejudicial to the bondholders; and the Caisse had drifted into the position of acceding to every request by the Government not manifestly unreasonable for grants for special expenditure.

The only remaining legislative provision of importance arose out of the Privileged Conversion of 1890. The Powers were unwilling to place the resulting economies at the free disposal of the Government, and they were accumulated at compound interest by the Caisse pending some agreement as to their disposal.

The bulk of the remaining legislation between 1885 and 1902 related to adjustments (mostly of minor importance) as to the sums which the Government was required to bring into account as gross revenue, as to the sum to be allowed in the accounts for authorised expenditure, and as to the shares to be taken by the Government and the Caisse respectively in the annual settlement. A considerable number of such adjustments were made pretexts for requiring the presentation to the Caisse of detailed accounts as to special items of Government expenditure.

Apart, then, from the accumulation of the conversion economies of 1890, the situation at the date of the Anglo-French Agreement was in substance that the actual debt service was maintained out of needlessly large revenues paid to the Caisse for that purpose, the balance being retained by the Caisse pending the annual settlement of accounts. As from such settlement, the remainder of the gross revenues either belonged entirely to the Government or was paid into the Reserve Fund, only to be paid out again for extraordinary expenditure on the request of the Government. The Caisse possessed detailed powers of control, of considerable theoretical magnitude in the aggregate; but it possessed no power of initiative, and was unable to exercise any general or systematic control over policy.

With these explanations, it is easy to follow the effect of the Law, and to understand the consent of the Powers to its promulgation.

The form of the Law would appear to have been largely determined by the fact that the draft was to be the subject of diplomatic negotiation and that in its final form it would require to be approved by the French Chambers. It sets out in full all provisions of the earlier law which it

was proposed to retain and expressly repeals all earlier legislation which is enumerated in a schedule.

Part I. sets out the various debts included in the Public Debt, with all necessary details as to rates of interest, etc.

Part II. deals with the Guaranteed, Privileged, and Unified Debts. It commences by reproducing in minute detail the earlier provisions as to the composition of the Caisse de la Dette and as to its purely administrative powers. The Caisse is expressed to be permanent, so long as any portion of any of the three debts remains unredeemed. It is provided with a reserve fund of £E1,800,000, and a working balance of £E500,000. The debt service is next assured by the direct payment to the Caisse of the proceeds of the land tax (except in the province of Kena) up to the sum required in each year. The balance of the land tax then becomes payable to the Government. The Government is not to legislate so as to reduce the yield of the affected land tax below £E4,000,000 (the sum required for the debt service being approximately £E3,600,000). The power of a minority of the Caisse to sue for a breach of the law, much discussed in 1896, is expressly acknowledged. It having been a matter of controversy whether the debts other than the Guaranteed Debt could be redeemed (or converted) in 1905, as maintained by the Government, or at any, and what, later date, the controversy is settled by a provision that the Guaranteed and Privileged Debts shall not be redeemed prior to 1910, nor the Unified prior to 1912: thereafter they may be redeemed in whole or in part at any time.

Part III., as to the Domains and Daira Debts, reproduces the earlier Law, except in so far as it omits the limit theretofore existing on the amount of the Domains Debt, which could be redeemed in any one year out of the proceeds of sale of lands mortgaged for the service of the debt.

Part IV.—Miscellaneous Provisions—is mainly concerned with gathering up scattered provisions in the earlier Decrees which it was necessary to preserve. It provides for the transfer to the Government of all funds in the hands of the Caisse not specifically reserved to the Caisse by other provisions of the Law. It also contains the repealing clause, which is safeguarded in a manner similar to that employed in English Statute Law Revision Acts. By virtue of the repeals the Railway Board disappears, as also all former affectations of revenue, and the miscellaneous powers of the Caisse above described, as well as the necessity of the Caisse's consent to Government borrowings. The Caisse is, in fact, retained for the sole purpose of receiving and paying over to the bondholders the sums which are due to them.

The only Debt Decrees remaining unrepealed are three formal Decrees of 1879-80 as to the Domains Debt, and the portion of the Law of Liquidation of 1880 which deals with the Daira Debt (the latter automatically disappearing with the redemption of the debt in October, 1905).

Now that the international fetters upon Egypt's financial freedom have been removed by international consent, it may perhaps be permissible to express a doubt whether the same results would have been any the more easily obtained if it had been necessary at every stage to negotiate with committees of bondholders instead of with the Great Powers. The consent of the Great Powers to the Law at least suggests that, in the absence of any political motive, they will not consider it to be in their interest to enforce the maintenance of any system which circumstances have shown to be clearly opposed to the interest of Egypt.

Electoral Law.—The Court of Appeal (native) recently decided that village headmen (omdehs) and sheikhs were public servants within the meaning of Art. 15 of the Organic Law, which declares public servants ineligible for membership of Provincial Councils, of the Legislative Council, and of the General Assembly. Law No. 21 in effect reverses this decision: it provides, however, that the acceptance of membership of either of the two latter bodies shall involve resignation of the post of omda or sheikh.

Finance.—Law No. 22 is the annual Budget.

Firearms.—Law No. 16 regulates the possession and carriage of fire-arms. The previous Law dated from 1891; the original proposals of that period were intended to effect something like a general disarmament, and were complicated by the attempt to introduce a substantial annual licence-tax. After being fought by Sir John Scott and Sir Herbert Kitchener through a violently hostile Legislative Council (which mainly based itself on the view that the effect of the proposals would be to deprive honest men of the power of defending themselves against dishonest ones), the law of 1891 emerged in so emasculated a form as to have remained practically a dead letter. In the interval, crimes by armed bands had practically disappeared, while the sporadic misuse of firearms had in no way diminished. The new Law allows any person of good character, who has a known domicile in Egypt, to take out a licence for the possession of non-rifled arms, the details of which are specified in the licence. Persons with certain antecedents are declared incapable of taking out a licence: in other specified cases the local authorities have a discretion. Village headmen and village sheikhs, public servants, members of certain public bodies, and all persons with decorations or grades were, on the request of the Legislative Council, exempted from the taking out of a licence for non-rifled arms, as also the sons of such persons if living with them and carrying their arms in their own neighbourhood only. Substantial landowners, etc., are exempted from the production of evidence of good character. The granting of a licence for the carriage of rifled arms is in all cases discretionary. One unexpected result of the Law has been that the cost of obtaining a certificate of good character from the *Casier judiciaire* has caused large numbers of persons to surrender their arms.

Fisheries.—Law No. 12 amends the Fishery Law of 1903 in unimportant particulars.

Post Office Savings Bank.—Law No. 2 creates a special section of the Post Office Savings Bank, the object of which is to attract Mohammedans, who are debarred by their religious law from taking interest, and numbers of whom, even when depositors, have in the past refused to draw any interest. Every depositor in the special section signs an authority to the Postmaster-General to employ his deposits in any manner authorised by the religious law, to the exclusion of the taking of usury, and to combine such deposits in a common fund with those of other depositors. Any excess of his share of the profits arising in any year from the employment of such common fund over one-fortieth of his capital is retained by the Post Office as commission—the rate of interest allowed in the ordinary section being, in fact, $2\frac{1}{2}$ per cent. The Law received the official approval of the late Grand Mufti: it is as yet too early to predict with what success it will be attended.

Public Health.—When, in 1889, the Powers admitted the right of the Egyptian Government to promulgate police regulations, etc., which, after certification by the Mixed Court of Appeal that they satisfied the conditions then agreed upon, should be applicable to Europeans, one of the first matters to which the Government turned its attention was that of public health. Amongst others, two Règlements were issued in 1891 dealing with pharmaceutical chemists and vendors of industrial poisons. Diplomatic protests were at once raised against the powers of inspection taken in the Règlements, with the result that, after much discussion, the inspection clauses were withdrawn and the Règlements remained substantially a dead letter. Diplomatic conditions having changed, it became possible in 1904 to amend and re-enact the two Règlements as Law No. 14. Advantage was taken of the revision to partially remodel the provisions as to pharmaceutical chemists on the lines of the British Pharmacy Act of 1868. The only features of general interest are the fact that the possession of any recognised diploma carries the right to practise in Egypt without re-examination; that power is taken to authorise doctors to open chemists' shops in districts where none such exists; and that a non-qualified person may be registered as the owner of a chemist's shop if he employs and registers a qualified manager. The last-named provision at first excited considerable opposition from qualified owners; but is probably essential in view of the impossibility of legislating without international consent as to the goodwill of a deceased chemist's business or of declaring that such goodwill shall be wholly lost if not purchased by a qualified chemist.

The regulations as to public establishments (cafés, etc.), and as to establishments liable to cause a nuisance or a danger to public health or to public safety, were also redrawn during the year by Law Nos. 1 and 13 respectively. The first-mentioned Law does little more than amend the

earlier Law on points of detail as to which difficulty has arisen in practice. The second Law is a measure of decentralisation—dividing the establishments in question into three categories, licences for which are (under an accompanying Ministerial Order) issued by the Ministry of Interior, Governors of Provinces and Mamours of districts respectively. It is of a somewhat rudimentary character, owing to the fact that effective legislation as to such establishments would inevitably come into conflict with rights consecrated by the Capitulations, but it represents some advance towards effective control.

Taxation.—Law No. 18 confirms certain reductions in land tax authorised by a Decree of 1898 which was inconveniently entangled with the powers of the Caisse de la Dette explained under the heading "Debt," and which was therefore included in the schedule of repeals annexed to Law No. 17.

Law No. 19 reduces transfer dues on land from 5 per cent. to 2 per cent. The comparatively small reduction in receipts which had ensued suggests that the former rate was so high as to prevent registration of contracts of sale.

Law No. 20 finally relieves inland navigation from all dues—a process which had been in progress for some years. The result has been an immediate and very large increase in water-borne traffic.

2. GERMANY.

[*Contributed by* Ernest J. Schuster, Esq., LL.D.]

The legislation will appear in the autumn number of the Journal.

3. ITALY.

[*Contributed by* Signor T. C. Giannini.]

There was no legislation of interest this year.

4. SWEDEN.

[*Contributed by* Nils Setterwell, Esq.]

Marriages and the Guardianship of Minors.—No less than three conventions were entered into on June 12, 1902, with certain foreign States, with a view to removing existing discrepancies in the several laws dealing with these matters. The principles accepted in these conventions, as far as they apply to Swedish circumstances, have been embodied in an Act promulgated on July 8, 1904.

Regarding, firstly, the individual's right to enter into matrimony, it is

enacted by that Act that a Swedish subject shall not be allowed to enter into matrimony at any place out of Sweden, unless he is entitled to enter into such marriage by the provisions of Swedish law, and, furthermore, that if the subject of any foreign State wishes to contract a marriage union before Swedish authorities, the question of whether he has the right to enter into such marriage or no shall be determined by reference to the laws of the State to which he belongs, save in the event of those laws definitely recognising the law of another place as valid in the case, under which circumstances that law may be observed. In no case, however, is any foreign subject who is already married permitted to enter into matrimony before Swedish authorities. Furthermore, no such individuals as are within the degrees of relationship prohibited by Swedish law are allowed to intermarry in Sweden.

As to the forms for the solemnisation of marriage, the principle of *locus regit actum* is in force. Thus, the stipulations in the Swedish law as to the publication of banns, as well as the other formalities required in connection with the celebration of a marriage, are also to be observed in the case of a subject of a foreign State who may wish to marry in this country before Swedish authorities. On the other hand, a marriage solemnised abroad in accordance with the forms prescribed by the *lex loci* shall be held in this country, too, to have been solemnised in due form, and that irrespective of whether the parties are Swedish or foreign subjects. Furthermore, certain provisions are laid down as to the validity of marriages entered into before diplomatic or consular officers, and also of those contracted between Swedish subjects before a Swedish clergyman abroad.

As to the dissolution of marriages on the ground of any pre-nuptial cause or causes for the same, the Act provides, *inter alia*, that a marriage shall be dissolved wherever any such cause can be shown to exist according to the law of that State of which the parties were subjects at the time of their marriage, or, in cases where the parties at the time of marriage were subjects of different States, according to the law of either of the States of which they were then subjects; provided that the King may ordain that such law is to be held valid in such cases, notwithstanding the fact that according to Swedish law a just cause for dissolution does not exist.

With regard to divorce it is enacted in the Act that proceedings for a divorce between non-Swedish subjects may be instituted in Sweden, if the party against whom the action is brought is domiciled in this country, or if the parties have been simultaneously domiciled in this country, but the party against whom the action is brought has deserted the other party, or has left the country subsequent to the cause for divorce having arisen. For such a divorce to be granted, it is essential that marriages should be dissolvable by divorce pursuant to the laws of the State of which the parties are subjects, and also that due cause for a divorce should exist, not only according to the law of that foreign State, but also according to Swedish

law. Judicial separation may sometimes be obtained by foreigners domiciled in this country in cases where divorce is not obtainable. When a decree of divorce or of permanent judicial separation has been pronounced by the legal authorities of any foreign State, the decree shall in all cases, when subjects of the said State are concerned, and, with certain provisos, also with respect to those of other States, be deemed valid in this country.

Relative to guardianship of minors, the chief enactments embodied in the Act are that when a Swedish subject who is not domiciled in the country dies and leaves children who have not attained their majority, a guardian may be appointed, and that when a foreigner resides in Sweden who, according to the law of the State of which he is a subject, is to have a guardian appointed for him on account of his being a minor, the Swedish judicial Court is to appoint a guardian in accordance with the Swedish law, in case such guardianship is not instituted in accordance with the laws of the foreign State.

Co-proprietorship.—An Act of September 30, 1904, establishes certain provisions intended to adjust certain points relating to co-proprietorship in physical objects, and also in rights based upon shares, bonds, or debentures. Co-proprietorship in other descriptions of rights does not come within the purview of the provisions of this Act. Moreover, special exclusion from the scope of the Act is declared as to community of proprietary rights enjoyed by husband and wife, or by part-owners in the estate of one deceased, which has not yet been sub-divided, or by such as form a company together, or are part-owners of one vessel, or are partners in the same mining operations. Of these descriptions of co-proprietary rights previous legislation has taken cognisance.

Regarding the exercise of the co-proprietary rights dealt with in this Act, it is enacted that the approval of one and all of the co-partners is requisite for the management and control of the common possession as a whole, or for the taking of any steps in connection with its administration. Any measure, however, which may be essential for the preservation of the common possession in a satisfactory state, and which does not admit of delay, the partners shall be entitled to carry out, notwithstanding the fact that one or other of their number may be prevented by illness, absence, or other cause from taking knowledge of, or part in, their decision or action.

In case the co-partners are unable to agree with respect to the management or use of their common possession, the Court shall be empowered, upon appeal from one or more of the co-proprietors, to appoint that the common possession shall be administered for a fixed period by a trustee, to be nominated by the Court.

Unless stipulations to another effect have been specially agreed upon, each of the co-proprietors is entitled to petition the Court for the common possession to be put up for sale by public auction. In case, however, any

other co-proprietor be able to show special cause why delay is desirable, or if it be a question of real property, and one of the other co-proprietors demand within a given period that the community of ownership shall cease and the property be divided, no order for the sale of the property by auction shall be issued. In conjunction with the issuing of an order for the sale by auction of the property, the Court shall determine a price below which the property shall not be sold, if a demand to that effect be made by any of the co-proprietors.

Literary Copyright.—Certain essential modifications having previously been made in the existing enactments contained in the Swedish statute book relative to the rights of translating to another language authors' writings, Sweden proceeded by promulgation of an Act, dated July 8, 1904, to record the fact that she too had joined the signatories to the Convention of Berne, drawn up in the year 1886 for the establishment of an International Union for the Protection of Authors' and Artists' Rights to the Enjoyment of the Fruit of their Labours.

5. UNITED STATES OF AMERICA: STATE LEGISLATION.

[*Contributed by* R. Newton Crane, Esq.]

In only fourteen of the States of the United States were legislatures in session in 1904, and in consequence there was a comparatively small amount of new legislation. What there was is also of relatively small importance, the major part of the work of the legislators being devoted to questions of finance and local government in which those not directly affected can have but little interest.

Executive and Popular Government.—In Kansas an amendment to the constitution was adopted extending the right of veto by the governor to items in money appropriation bills, a power which is now granted to the executive in twenty-eight States. In Louisiana the right of appointing the judges of the Supreme Court, the Court of last resort, was taken away from the governor and transferred to the people. In the same State, so jealous, apparently, are the populace of their rights of control, that even where temporary vacancies occur in the office of sheriff, clerk of the District Court, district attorney and judge, a special election must be held so that the people may fill them by popular suffrage. On the other hand, in Oregon, where formerly the State printer was chosen by the people, he is now selected by the legislature, and in Tennessee the proposition to transfer the choice of secretary of state, treasurer, and comptroller from the legislature to the people was defeated at the polls.

The Ballot.—In Oregon an amendment to the constitution providing

for woman suffrage passed the legislature and was referred to the voters for final decision. The Governor of Massachusetts in his annual message recommended the extension of the suffrage to women. In Rhode Island it was stated that the property qualification for the ballot for municipal councils disfranchised three-fifths of the ordinary voters, and the governor strongly recommended that it be abolished. Kentucky is about to vote on an amendment which does away with the balloting system and substitutes therefor *viva voce* voting.

Criminal Law.—In Virginia an Act has been passed which requires an examination by magistrates before issuing a warrant, and the refusal of a warrant unless a *prima facie* case has been made out. In Rhode Island attorneys appointed to defend indigent prisoners may not receive more than $10 a day while engaged in the trial, and $10 and necessary disbursements if there is no trial. In Kentucky and Virginia the penalty for the bribery of officials or voters has been increased from one to five years in the penitentiary, with loss of suffrage for ten years in the former State. The statute ends with the following paragraph:

> In view of the serious wave of corruption which has swept over the country involving officers of the federal government, members of the various State legislatures, and numerous boards, commissions, and councils of various cities, and to prevent the possibility of such shame in Kentucky, an emergency is hereby declared to exist, and this Act shall take effect upon its approval by the governor.

Marriage.—Considerable attention is being paid to the question of marriage, not so much from a religious as from a physical point of view. In Louisiana a marriage hereafter contracted out of the State, within the prohibited degrees, will not be valid in the State if the parties return to permanently reside there. New Jersey prohibits the marriage of any person who has been confined in any public asylum as an epileptic, insane or feeble-minded patient, without a certificate from two licensed physicians of complete recovery and that there is no probability of the transmission of such defects. Ohio prohibits the granting of a marriage licence where either party is an habitual drunkard, an epileptic, or is imbecile or insane, or where the applicant at the time of making application is under the influence of any intoxicant or narcotic drug. In Virginia the marriage of a woman with the husband of her brother's or sister's daughter is prohibited.

Temperance.—The most drastic legislation to control the drink traffic for some time past occurred in Virginia, where a statute has been enacted imposing a yearly tax of $2 on each member of a club where drinks are sold, which payment shall be in lieu of licence, but the maximum amount to be paid shall not exceed $350. The membership shall be filed with the clerk of the county. The entrance fee must not be less than $10, and the subscription must not be less than $1 a month. Furthermore the club must close on Sundays, and no club can be licensed or sell drink under the Act in any county or town where there is local option.

Railway Transportation.—Georgia judges are prohibited on pain of impeachment from receiving free transportation or other favours from railway or other public corporations. Railway companies in that State are forbidden to issue non-transferable tickets. In Virginia the railways must issue mileage tickets "good for the purchaser and the actual members of his family." Several of the States passed statutes requiring railway companies to abolish level crossings. South Carolina compels railways to carry not exceeding two hundred pounds of baggage free of charge, and makes bicycles baggage. The Alabama law was amended so that it now provides that railway employees shall be examined to ascertain whether they can see and distingush objects and colours and to hear sounds to a satisfactory degree.

Labour and Regulation of Occupations.—There was very little new legislation in the United States in 1904 affecting labour and employment. Louisiana passed a law requiring proprietors of retail shops to allow women employees one hour for their mid-day meal or recreation. In Maryland saleswomen, by statute, are not to be forbidden to make use of seats. In Rhode Island suitable toilet rooms containing closets, washing facilities, and rooms for changing clothing must be provided in foundries where ten or more men are employed. In New York laws were passed to regulate "sweat shops." These require tenements where work is done to be licensed on the report of the health inspectors that the premises are sanitary, and semi-annual inspection is provided for. In the few new statutes the tendency is manifest to regulate various professions, trades, and occupations. These include accountants, auctioneers, barbers, hawkers and pedlars, junk and second-hand dealers, nurses and plumbers. In certain States where licence fees have been increased honourably discharged army men are exempted from all licences. In Montana a constitutional amendment was adopted providing for an eight-hour day for public work, and in mines and smelters. In Vermont children under fifteen may not be employed during school term time, and eight hours was made a legal day for children under sixteen, with inhibition of employment from 7 P.M. to 7 A.M.

Employment Offices and Agencies.—New York and Ohio have enacted statutes to regulate employment offices and agencies. The new law in the former State is the most advanced legislation on the subject in the United States, and justifies the following analysis of it in the Bulletin of the New York Department of Labour:

> The Act defines an employment agency as the business of procuring work or employment for persons seeking employment where a fee is charged, the sole exception being teachers' agencies. No person is to engage in the business without procuring a licence and paying an annual fee of $25—an increase of $12.50 in New York City—and furnishing a bond for $1,000, with approved sureties. The bond requirement is designed to put an end to the most flagrant abuse connected with the name of employment agencies, the practice of opening an office duly

licensed, advertising for workmen to take fictitious "jobs," collecting fees from hundreds to whom positions are promised, and then decamping with the proceeds.

No agency may be located in a public-house. The prohibition is designed to stop a common practice of public-house keepers of displaying signs and advertising for labourers in large numbers in order to keep men hanging about the public-house for their patronage. It will be remembered that the grain shovellers' strike in Buffalo five years ago was largely due to a revolt of the men against the system whereby the public-house keepers, who acted as employment agents, favoured those workmen who spent the most for drink. Keepers of lodging-houses are permitted to maintain employment offices, but only separate from the lodging apartments, and they must be specially designated in the licence. No employment offices may be located in rooms used for living purposes, in lodging-houses or elsewhere.

The very worst evil of the private agency system is aimed at in the provision of s. 7, that no licensed person shall send or cause to be sent any female help as servants or inmates to any questionable place, or to any house or place of amusement kept for immoral purposes, the character of which such licensee could have ascertained upon reasonable enquiry. Employers, on the other hand, will be protected by the requirement that agencies must investigate at least one of the references furnished by applicants for work in a private family or employment in a fiduciary capacity.

The law prescribes, as the maximum fees, that employment agencies may collect from applicants for employment 10 per cent. of the first month's wages in the case of servants, labourers, and unskilled workers generally, and 5 per cent. of the year's salary, or 100 per cent. of the first week's wages, in all other cases. If no situation is secured for an applicant he may demand the return of the entire fee with the exception of 50 cents, which the agency may retain, if it in good faith endeavoured to find employment for the applicant.

Receipts for fees must, as heretofore, contain the section of the law pertaining to fees, and additional protection to workers is assured in the requirement that in sending an applicant to employers the agent must give him the employer's name and address, written on a card containing the name and address of the agency. When a workman is sent outside the city the agent must file with the mayor and also furnish to the applicant a copy of the contract, in a language which he understands, stating the name and address of employer and of employee, nature of the work to be performed, hours of labour, wages offered, terms of transportation, etc.

The Ohio Act regulates the registration fee to $2, which is to be repaid to the applicant on failure to obtain a situation. The part of the California Act of 1903 which limits the charges of an employment agent was declared unconstitutional by the Supreme Court of the State on the ground that it interfered with the freedom of contract.

BRITISH EMPIRE.

I. UNITED KINGDOM.[1]

[*Contributed by* J. M. Lely, Esq.]

Acts passed—Public General, 36; Local and Personal, 245; Private, 3.

Thirty-six public Acts of Parliament became law in the session which was prorogued on August 15, 1904, two of them applying to Scotland and two applying to Ireland only. The following is a short account of the most noteworthy.

The letters B.E., U.K., E., S., and I. respectively signify application to the British Empire, the United Kingdom of Great Britain and Ireland, England (including Wales by virtue of the Wales and Berwick Act, 1746), Scotland, or Ireland.

Continuance of Temporary Acts.—The Expiring Laws Continuance Act [U.K.] continued until December 31, 1905, 35 principal and 55 amending Acts or parts of Acts, amongst them being the Poor Rate Exemption Act of 1840 [E.], the Militia Ballots Suspension Act of 1865 [U.K.], the Locomotives Act of 1865 [E.], the Ballot Act of 1872 [U.K.], the Employers' Liability Act of 1880 [U.K.], and the Vaccination Act of 1898 [E.].

Army.—The Army (Annual) Act [B.E.] continued the Army Act for one year, and legalised a standing army of 227,000 men, exclusive of those actually serving in India, as against the 235,761 legalised by the Act of 1903, and 420,000 by the Act of the year before. Occasion was also taken to double permanently the amounts (from one to two shillings and from sixpence to a shilling) which may be compulsorily stopped from the pay of a sergeant or private soldier for the maintenance of his wife or legitimate children.

Anglo-French Convention.—The Anglo-French Convention Act [B.E.] gives the approval of the Parliament of this country to the Convention (subject to the approval of their respective Parliaments) between his Majesty the King and the President of the French Republic for the purpose

[1] This article is mainly a reprint of an article in *The Times* of January 4, 1905, entitled "Legislation of the Year 1904."

of putting an end to difficulties which had arisen in connection with rights of fishing on the coast of Newfoundland. The Convention is scheduled to the Act.

Birds.—The Wild Birds Protection Act [U.K.] penalises up to 40*s.* any person setting upon a tree a trap for any wild bird, and the Wild Birds Protection (St. Kilda) Act [S.] repeals that part of the Wild Birds Act of 1880 which excludes the Island of St. Kilda from its operation.

Bishoprics.—The Bishoprics of Southwark and Birmingham Act [E.] provided for the foundation of Bishoprics of Southwark and Birmingham. This was accomplished not by the Act itself, which is a mere superstructure with substituted local schedules, but by the incorporation *mutatis mutandis* of the Bishoprics Act, 1878, "including the repealed portions thereof." These portions comprise a preamble declaring the expediency of increasing "episcopal supervision," and also long and elaborate provisions deferring the foundation of the bishoprics by his Majesty the King until the Ecclesiastical Commissioners had certified that funds sufficient for their endowment had been raised—provisions which the raising of the funds necessary, and the foundation of the specified sees of Liverpool, Newcastle, Southwell, and Wakefield had rendered useless, and were, therefore, consequentially repealed by the Statute Law Revision Act of 1894. This revival, by merely referential incorporation, of a repealed enactment, as in the Finance Act of 1903 (see *The Times* of January 1, 1904), however expedient from an ecclesiastical and Parliamentary point of view, is, in point of draftsmanship, greatly to be deplored.

Children.—The Prevention of Cruelty to Children Act [U.K.] is very largely a measure of consolidation, repealing and re-enacting with little variation the whole of the Prevention of Cruelty to Children Act of 1894 for the protection of children under sixteen years of age, and also that part of the Employment of Children Act, 1903, which raises from seven to ten years the age above which the employment in public entertainments of children under eleven is allowed under magisterial licence. The main amendments effected are these. Societies for the prevention of cruelty to children may, with the consent of the Local Government Board, be subscribed to by boards of guardians, and children in respect of whom a conviction for cruelty has been obtained may be committed to the charge of such societies. The Vexatious Indictments Act, by which various restrictions (such as the requirement that the prosecutor has been bound over to prosecute) are imposed on the preferring indictments for various offences specified in that Act, is applied to misdemeanours under the Act, and the limit of time within which proceedings under the Criminal Law Amendment Act, 1885, may be commenced for criminal abuses of girls between thirteen and sixteen years of age is extended from three months to six. Lastly, with a curious forgetfulness of the general provisions of the Criminal Evidence Act, 1898, the particular section of the Act of 1894 which

enacted that persons charged with cruelty to children should be competent but not compellable to give evidence is re-enacted verbatim.

Education.—The Education (Local Authority Default) Act [E.] enacts that—

> The Board of Education, without prejudice to their right to take any other proceedings [*e.g.* by *mandamus*], may, if they are satisfied that it is expedient to do so . . . as respects any elementary school, make orders for recognising as managers of that school any persons who are acting as managers thereof, . . . and if it appears to the Board that the managers . . . have . . . incurred any expenses for which provision should have been made by the local education authority, pay to the managers such amount in respect of these expenses as in the opinion of the Board was properly incurred.

Any sums so paid are declared to be a debt due to the Crown from the local education authority, and may be deducted from any sums payable to that authority on account of Parliamentary grants.

Foreign Plate.—The Hall-Marking of Foreign Plate Act [U.K.] directs that foreign plate when brought to be assayed and stamped, as it has to be by revenue law, must be marked so as to distinguish it as foreign, and that every person bringing it to an assay office, unless it be in charge of a revenue officer, must state in writing whether it was wrought in England, Scotland, or Ireland, or was imported from foreign parts.

Intoxicating Liquors.—The Licensing Act [E.], which came into operation on the January 1, 1905, deals only (except in its general transfer to quarter sessions of the power of a county licensing committee to confirm new licences) with "on-licences" for the sale of any intoxicating liquor (other than wine alone or sweets alone) for consumption on the premises, and is best considered first under the head of "Renewals," and secondly under that of "New Licences."

Renewals.—The power of the licensing justices of any licensing district to refuse a renewal on the ground that the licences in that district have become too many is transferred from the licensing justices to quarter sessions, but quarter sessions can exercise such power only (1) on a reference from the licensing justices, and (2) on payment of compensation to the dispossessed licensees.

The reference is obligatory on the licensing justices, and a consideration of their reports is obligatory on quarter sessions, which may refuse the renewal. The compensation is a sum equal to the difference between the value of the licensed premises as licensed and their value as unlicensed. It is to be paid to "the persons interested," and in default of agreement between them and quarter sessions the amount of it is to be determined by the Commissioners of Inland Revenue subject to appeal to the High Court of Justice. The moneys required for these payments are to come out of a compensation fund to be constituted by quarter sessions annually

imposing, "unless they certify to the Secretary of State that it is unnecessary to do so in any year," charges on the licences renewed within their area. The charges will be in proportion to the value of the licensed premises and at rates not exceeding certain *maxima* scheduled to the Act, ranging from £1 on premises under £15 yearly value to £100 on premises of £900 yearly value or more. If the tenure of the holder of the licence is leasehold, he may deduct from his rent a percentage of the charge, lessening with the length of his term, ranging from 88 per cent. in the case of an unexpired term of two years to 1 per cent. in the case of a term of from fifty-five to sixty years, a person whose unexpired term does not exceed one year being entitled to treatment as a freeholder. The charges are to be levied as part of the corresponding Excise licence duties.

The owners of premises licensed before 1869 under special Acts for the sale of beer or wine lose the privilege enjoyed since then of renewal as of right in the absence of ground for refusal affecting the character of the licensee or his house. It has been not unnaturally suggested (see Mr. Mackenzie's edition of the Act at p. 5) that "compensation in the case of these licences will be higher than that given in the case of other licensed premises in order to recognise their superior Parliamentary title": but the Act itself draws no such distinction in any express words. One important distinction, however, between these *ante*-1869 licences and other existing on-licences is drawn by the Act. The renewal of them cannot be refused without compensation on the grounds of structural deficiency or unsuitability, as can the renewal of other existing on-licences.

It is further provided that in every case of the refusal of the renewal of an "on-licence" existing at the time of the passing of the Act by licensing justices they are to state in writing the grounds of refusal, and also (indirectly and clumsily) that renewals may be refused without compensation on the ground of an habitual and persistent refusal "to supply suitable refreshment (other than intoxicating liquor) at a reasonable price," or because "the holder of the licence has failed to fulfil any reasonable undertaking"—whatever that may mean—"given to the justices on the grant or renewal of the licence."

All this new law as to renewals will equally apply to transfers.

New Licences.—The jurisdiction of a county licensing committee to confirm new licences is transferred to quarter sessions, and the licensing justices in granting "on-licences" are newly armed with most comprehensive and far-reaching powers. They may attach such conditions as to payment, tenure, and "any other matters" as "they think proper in the interest of the public," it being obligatory in every case to attach such conditions as "having regard to suitable premises and good management" they "think best adapted for securing to the public any monopoly value which is represented" by the increased value arising, in the opinion of the justices, from

the licence being attached. New licences may also be granted for terms not exceeding seven years, instead of for one year only, as has been the practice for some hundred and fifty years. At the end of the seven years an application for re-grant is to be treated as an application for a new licence and not for a renewal, and during the seven years the licence is to be subject to forfeiture if any condition imposed on the grant is not complied with. The conditions which may be attached to a new licence may be expected to give rise to many questions of difficulty. Their character is described in the most general terms, and the discretion of the justices is controlled only by the vague mention of the interest of the public, and the direction that the amount of any payments imposed shall not exceed the amount required to secure the monopoly value to the public. It seems impossible to put any other legal limit upon the magisterial discretion. The confirming authority, however—*i.e.* in counties quarter sessions, in boroughs not having ten justices a joint county and borough committee, and in other boroughs the whole body of justices—may "with the consent of the justices authorised to grant the licences vary any conditions attached to the licence."

Quarter sessions may divide their area into districts for the purposes of the Act, and may delegate any of their powers under it to a committee appointed in accordance with rules to be approved by the Home Office, and "except in a county borough shall so delegate their power of confirming the grant of a new licence, and of determining any question as to the refusal of a licence under the Act." The Home Office also may make general rules [1] for carrying the Act into effect, and particularly providing for provisional renewal of licences included in reports of justices as not to be renewed without consideration, for regulating the management and application of the compensation fund, for constituting where requisite standing committees of quarter sessions, and for regulating the procedure of quarter sessions on the consideration of the reports of licensing justices, and on any hearing as to the refusal of renewals or the approval or division of the amount to be paid as compensation.

Such is a brief sketch of the Licensing Act of 1904. The tortuousness of its phraseology and the complexity of its subject render its construction and administration matters of extreme difficulty, especially as it has to be considered in connection with some score of antecedent statutes, such as the Alehouse Act of 1828, the Beer and Wine Acts of 1830 and 1860, the Wine and Beerhouse Act of 1869, which reimposed the magisterial control taken away by Brougham and Gladstone in those two years, the severe Act of 1872 and its quickly mitigating successor of 1874—all of which enactments are still to a great extent unrepealed. The consolidation to which the Statute-book has been a stranger since 1828 has now, as Sir Henry Cunningham pointed out in *The Times* of September 29, 1904, become

[1] For the "Licensing Rules, 1904," under these powers, see *Statutes of Practical Utility for* 1905, tit. "Intoxicating Liquors."

more than ever desirable, but it would have to be accompanied by more amendments in point of form than is usual with consolidation.

The Registration of Clubs (Ireland) Act [I.] provides for the registration of Irish clubs upon the certificate of county justices or county borough justices that the club in respect of which the certificate is given is to be conducted as a *bona fide* club [and in the case of an existing club that it also has been so conducted] and not mainly for the supply of excisable liquor. If at any time a justice of the peace is satisfied that there is reasonable ground for supposing that any registered club is so managed as to constitute a ground of objection to the renewal of the certificate, he may grant a search warrant. A Court of summary jurisdiction may also cancel the certificate of a club on proof of improper management.

London.—The Metropolitan Improvement (Funds) Act [E.] authorised the appropriation of certain surplus funds arising from moneys payable in respect of the creation of Battersea Park in 1846, and directed by an Act of 1851 to be accumulated until required for the execution of improvements in the metropolis and its neighbourhood, "towards the opening of the Mall into Charing Cross." The Act adds that the residue, if any, may be applied by the Commissioners of Works, with the sanction of the Treasury, to such other improvements in the metropolis and its neighbourhood as they may think fit.

The London Electric Lighting Areas Act [E.] provides for the adjustment, in accordance with the changes of boundary effected under the London Government Act, 1899, of the areas in which local authorities and companies are authorised to supply electricity.

Poor Law.—The Poor Law Authorities (Transfer of Property) Act [E.] provides for the transfer of property and other matters consequent upon the dissolution of districts and Poor Law unions or the addition of one Poor Law union to another.

The Outdoor Relief (Friendly Societies) Act [E.] limits the discretion of guardians of the poor (conferred on them by the Outdoor Relief Friendly Societies Act of 1894), in granting outdoor relief to a member of a friendly society, to consider the amount which such member has received from such society, by the direction that sick pay up to 5*s.* a week is not to be so considered. A departmental comment on this Act, which may be found in *The Times* of September 3, 1904, was contained in a Local Government circular to Poor Law guardians.

Public Health.—The Public Health Act [U.K.] extends the powers of the Local Government Boards of England, Scotland, and Ireland under the Public Health Act, 1896, to make regulations to prevent danger to public health from infectious diseases from ships, by declaring that such powers, "so far as may be necessary or expedient for the purpose of carrying any convention with any foreign country," shall include the authorisation of measures to prevent danger from ships arriving at any port.

Railways.—The Railways (Private Sidings) Act [U.K.] enacts that the reasonable facilities for receiving, forwarding, or delivering traffic which every railway company is bound to afford shall include facilities for private siding junctions enforceable by order of the Railway Commissioners.

Revenue.—The Finance Act [U.K.] increased the duty on tea from 6*d.* to 8*d.* on the pound, on cigars from 5*s.* to 5*s.* 6*d.* per pound, on cigarettes from 3*s.* 5*d.* to 4*s.* 5*d.*, and added 3*d.* per pound to the duties on unmanufactured tobacco if stripped. The additional duties of Customs on tobacco, beer, and spirits, and of Excise on beer and spirits which were imposed in 1900 were further continued, and the income tax was raised from 11*d.* to 1*s.* There is also a novel and most important provision that—

> The National Debt Commissioners shall, as and when the Treasury request, pay into the Exchequer, out of the account of unclaimed dividends, sums not exceeding in the whole one million pounds, and may for that purpose sell any stock standing to the credit of that account.

Savings Bank.—The Savings Banks Act [U.K.], expressly directs the appointment, indirectly required by the Trustee Savings Bank Act of 1863, of an auditor of every trustee savings bank, and limits the appointment to one year, subject to eligibility for reappointment. Amongst other provisions is one providing that—

> The Postmaster-General may enter into an arrangement with any Government savings bank in any British possession or foreign country for the transfer of sums standing to the credit of depositors from such a Government savings bank to the Post Office Savings Bank, or from the Post Office Savings Bank to such a Government savings bank—to the Post Office Savings Bank or from the Post Office Savings Bank.

This world-wide enactment may be supplemented by Post Office regulations to be made with the consent of the Treasury, which may provide for any matters necessary to give effect to the transfers authorised.

Shops.—The Shop Hours Act [U.K.] defines a shop as including any place where retail trade, including the business of a barber, is carried on, but excludes from its scope fairs, bazaars for charitable purposes, and any shop where the sole business is either (1) Post Office business, or (2) sale of medicines, etc., or (3) retail of intoxicating liquors, or (4) sale of refreshments for consumption on premises, or (5) sale of tobacco "and other smokers' requisites," or (6) sale of newspapers, or (7) railway bookstalls or refreshment-room business. "Local authority" means in London, outside the City—in which the Common Council is to be the authority—a metropolitan borough council, and elsewhere the council of an urban district with a population of over 20,000, the county council, or the borough council; and "central authority" means in England a Secretary of State, in Scotland the Secretary for Scotland, and in Ireland the Lord

Lieutenant. Closing orders made by a local and confirmed by the central authority may fix closing hours—at 7 p.m. or later, but not earlier, except on one day of the week at 1 p.m. or later—on the several days at which either throughout the area of the local authority or in some specified part of it "all shops or shops of any specified class are to be closed for serving customers." The closing order may contain exemptions and conditions, and may authorise emergency sales after the closing hour. Before making an order, the local authority must have been "satisfied" that there was a *prima facie* case for it, must have given public notice of their intention and opportunity for objections, and must have been "satisfied," after considering objections, if any, that the occupiers of at least two-thirds of the shops to be affected approve.

Telegraphs.—The Telegraph Money Act [U.K.] authorises the Treasury to issue such sums up to £3,000,000 as may be required by the Postmaster-General for the purpose of the numerous Telegraph Acts passed between 1863 and 1899 to promote the Government purchase and control of telegraphic or telephonic communication, the money being raisable by borrowing by means of terminable annuities for a term not exceeding twenty years.

The Wireless Telegraphy Act [U.K.], which extends to the whole of the British Islands, and may by Order in Council be applied to British ships on the high seas, prohibits wireless telegraphy except in accordance with a licence of the Postmaster-General for such period as he may determine, and containing the restrictions subject to which it is granted. The Act does not apply to electrical apparatus for actuating machinery, or for any purpose other than the transmission of messages; and special licences may be granted solely for experimental purposes, and also (due regard being had to the maintenance of effective control) "at reduced terms for the establishment and working of wireless telegraph stations to be used exclusively for the transmission within the United Kingdom of news to public registered newspapers."

Universities.—The University of Liverpool Act [E.] extends the privileges of graduates of the University of Liverpool by opening to them all offices open to graduates of the Universities of Oxford, Cambridge, London, and Manchester, and granting to them all privileges and exemptions enjoyed by graduates of those Universities, and the Leeds University Act [E.] extends the privileges of Leeds graduates in the same terms, which are taken from the Victoria University Act, 1888, by which the privileges of graduates of the Victoria University of Manchester were similarly extended.

Weights and Measures.—The Weights and Measures Act [U.K.], which came into operation on January 1, 1905, substitutes for the power of the Board of Trade to disapprove regulations of local authorities an initiative power to that Board to make regulations as to verification and stamping weights and measures, obliteration of stamps, application of tests of accuracy,

limits of error to be allowed, "and generally for the guidance of local authorities," but adds that these regulations may confer on local authorities power to make special local regulations of their own in suitable cases. There are also many small amendments of the Acts of 1878 and 1889, as that the existing fines for increasing or diminishing weights are to apply to measures, that inspectors are disabled from receiving an informer's part of a fine, that imprisonment with hard labour may be awarded on conviction of any offence (instead of only on conviction of a second or subsequent offence) committed with intent to defraud, that local authorities, under the Act of 1889 only enabled to provide working standards of measure and weight for their officers, become bound to provide them if the Board of Trade so direct. Moreover, for the vague general prohibition of discount being allowed by an inspector on his scheduled fees for verification and stamping there is substituted the specific and comprehensive enactment that—

> No discount, commission, or rebate of any kind shall be given, nor any allowance made, by such inspector, or by the local authority, for the use of tools, premises, machinery, or instruments, or assistance tendered . . . except when verification and stamping take place on the premises of a glass or earthenware manufacturer, in which case such adequate and reasonable allowance as may be agreed upon by the local authority with the consent of the Board of Trade may be made.

Scotland and Ireland.

The Registration of Clubs (Ireland) Act has been dealt with under the head of "Intoxicating Liquors." The Secretary for Scotland Act [E., S.] enacts that the Secretary of State may, with the concurrence of the Treasury and the Secretary for Scotland, transfer to the Secretary of Scotland all powers under the Reformatory and Industrial Schools Acts which are exercisable in Scotland; and the Irish Land Act confers on owners of untenanted land, and also—thus cutting a knot of great legal perplexity—on tenants for life as distinguished from their trustees, the benefit of the bonus which the great Act of 1903 handed over out of the public Exchequer to the sellers of Irish land to or for Irish occupiers.

2. ISLE OF MAN.

[*Contributed by* His Honour S. Stevenson Moore, *First Deemster*]

There has been no legislation of general interest this year. The Acts passed were Local and Private.

The general law of the Island is now almost assimilated to that of England.

3. THE CHANNEL ISLANDS: JERSEY.

[*Contributed by* T. Nicolle, Esq.]

There has been no legislation of any general interest.

II. BRITISH INDIA.

[*Contributed by* Sir Courtenay Ilbert, K.C.S.I.]

1. ACTS OF GOVERNOR-GENERAL IN COUNCIL.

Acts passed—16.

Poisons.—The provisions of the English law for regulating the sale of poisons have often been criticised as inadequate by coroners and others. The difficulties in the way of making the law more stringent arise, of course, from the fact that many poisonous substances are in extensive use, both for manufacturing or for sanitary purposes, and that further restrictions would be injurious not only to trade but to health. For instance it would be undesirable, from the sanitary point of view, to make the purchase of carbolic acid more difficult or expensive. Critics of the English law will probably learn with some surprise that until the year 1904 there was no general law for regulating the sale of poisons in British India. There was an Act for the Bombay Presidency, and another for towns in what are now the United Provinces, but no general Act. It was not that the negligent or criminal use of poisons has ever been unknown in India—quite the contrary—but that the practical difficulties in the way of effective legislation had always been found insuperable. Restrictions which can only be enforced by subordinate officials, without adequate control over them, are apt to do more harm than good. The new Poisons Act (1 of 1904), which seems to be the result of discussions extending over some eight or nine years, is limited in its scope and permissive and experimental in its character. Local Governments may make rules for regulating the possession for sale, and the sale, of specified poisons in particular towns and cantonments. The Government of India may prohibit the importation of white arsenic into British India except under licence. Local Governments may, with the consent of the Government of India, regulate the possession for sale, and the sale, of white arsenic in the whole or any parts of their provinces, and the mere possession of white arsenic in any area where the drug is used for poisoning human beings or cattle to such an extent as to make restrictions on its possession desirable. The Government of India may, by notification, apply to other specified poisons the provisions relating to white arsenic. It would appear from the statements made in Council that the two poisons most commonly used for homicidal purposes in India are opium and white arsenic. Opium is a Government monopoly, and control over its sale can be exercised through the excise machinery. White arsenic, "the favourite agent of the Indian poisoner," is not produced in India, and therefore can be more easily dealt with than the indigenous vegetable poisons in which India abounds. There are extensive savings for things done in good faith

by medical or veterinary practitioners, chemists, druggists or compounders, and tanners or trade merchants. A cautious measure, which may possibly be useful within its narrow limits.

Courts.—The Central Provinces Courts Act, 1904 (No. 2), consolidates previous Acts, with a few amendments.

Local Loans.—The Local Authorities' Loans Act, 1904 (No. 3), enables certain municipal and port authorities to borrow money by the issue of short-term bills.

Military Police.—The North-west Border Military Police Act, 1904 (No. 4), supplies a code of discipline for the military police of the new frontier province, and is based on the provisions of the Bengal Military Police Act, 1892.

Official Secrets.—The Official Secrets Act, 1904 (No. 5), was one of the most contentious measures passed by the Governor-General's Council during Lord Curzon's term of office. It will be remembered that an Act with a similar title was passed by the Parliament at Westminster in 1889. The main provisions of this English Act were contained in two sections. The first (s. 1 of the Act) related only to naval and military secrets. It imposed penalties on persons who, for the purpose of wrongfully obtaining information, entered without permission fortresses, arsenals, factories, dockyards, and other like places, or, for the like purpose, being in or near such places, obtained documents or knowledge, or made sketches or plans; and also on persons who improperly communicated information about naval or military matters. The other section (s. 2), which was not confined to naval or military matters, imposed penalties on persons who, having officially obtained information, wrongfully disclosed it. S. 3 punished persons who should incite, counsel, or attempt to procure the commission of offences under the previous sections. The English Act applied to all offences committed in any part of His Majesty's dominions, or committed by British officers or subjects elsewhere. But should the legislature of any British possession, a term which includes British India, pass an Act containing provisions to the same effect, there was power, by Order in Council, to suspend the operation of the English Act within that possession. The Government of India, in Lord Lansdowne's time, took advantage of this provision by passing an Act for India in substitution for the Imperial Act. The Indian Act was passed in the same year as, and indeed within two months after, the English Act, and followed its provisions very closely. The section about incitement was omitted, as being sufficiently covered by the provisions of the Indian Penal Code about abatement. Proceedings under the English Act have been rare, and the attempts to put the Act in force have not always been judicious. In the opinion of competent persons the Act has operated usefully as a deterrent, but, for obvious reasons, convictions under it are not easy to obtain. Official opinion, at all events in naval and military circles, would probably be in favour of making its

provisions more stringent, but any attempt in this direction would run the risk of formidable opposition. In India official opinion is stronger, and newspaper opposition is less formidable, and therefore Lord Curzon's Government, irritated, doubtless, by the wholesale leakage which takes place from Government offices in India, brought in a bill which extended to information about civil affairs the provisions of the Act of 1889 relating to information about naval or military affairs. In other words the enterprising editor or reporter on the look-out for scraps of interesting information in an ordinary Government office was placed in the same position as an inquisitive stranger prying into the secrets of a fortress or arsenal. This was naturally distasteful to the press, the measure encountered formidable opposition both outside and inside the walls of Council, and some concessions were made before it finally became law.

Transfer of Property.—The Transfer of Property Act, 1904 (No. 6), makes some further amendments in one of the codifying measures passed in the time of Mr. Whitley Stokes. Under the Indian law of registration, a registered transfer of land prevails against an earlier unregistered transfer. But this priority has, under judicial decisions, been qualified by the doctrine of notice, the effect of which is that a registered transferee taking with notice of a previous unregistered transfer does not obtain priority over it. The Act of 1904 endeavours to remove the conflict between registered and unregistered transfers by requiring all transfers to be registered, with an exception as to leases.

Ancient Monuments.—In the provisions of the Ancient Monuments Preservation Act, 1904 (No. 7), Lord Curzon was fortunate enough to obtain the hearty concurrence and support of native Indian as well as of official opinion, and the eloquent speech which he made at the final stage of the bill bears testimony to the admirable work which, under his auspices, has been done for the preservation of the ancient monuments of India. The Act defines an "ancient monument" as meaning "any structure, erection, or monument, or any tumulus or place of interment, or any cave, rock-sculpture, inscription, or monolith, which is of historical, archæological, or artistic interest, or any remains thereof," and as including the site of an ancient monument, such portion of land adjoining the site as may be required for fencing, covering in, or otherwise preserving the monument, and the means of access to and convenient inspection of the monument. The local Government of any province may declare any ancient monument to be a protected monument. Commissioners and collectors are empowered to acquire protected monuments by purchase, lease, gift, or bequest, and to accept their guardianship. Arrangements may also be made by the Government with the owner of a protected monument for its preservation, and these arrangements may include provisions for its maintenance and custody, for restrictions on the right to destroy, remove, alter, or deface, and for facilities of access. Powers of compulsory purchase are given in certain

cases. The provisions of the Act extend not only to ancient monuments, but to "antiquities," which are defined as including any movable objects which the Government, by reason of their historical or archæological associations, may think it necessary to protect against injury, removal, or dispersion. The Government can control the traffic in antiquities by prohibiting or restricting their carriage by sea or land into or out of British India or any specified part of British India. It can control the movement of sculptures, carvings, or other like objects and provide for their compulsory purchase in certain cases. And, finally, it can control excavations.

Universities.—Even more contentious than the Official Secrets Act was the Indian Universities Act, 1904 (No. 8), which remodels the constitution of the five Indian Universities, those of Calcutta, Madras, Bombay, Lahore, and Allahabad. It was based on the report of the Indian Universities Commission, over which Sir Thomas Raleigh presided, and the work which he performed on the Commission, and in preparing the subsequent Act and steering it through the Legislature, was the most important and arduous of the tasks imposed upon him during his term of office as Legal Member of Council. The older Indian Universities were framed on the model of the University of London, as it then was, and were mainly examining bodies. But the new Act expressly declares their functions to include teaching, and thus removes some doubts as to the purposes to which their endowments could be applied. It reduces the size of their governing bodies, limits the number of Fellows, cuts down the tenure of Fellowships to five years, alters the mode of appointing or electing to Fellowships, and gives greater control over affiliated colleges. There is no subject in which the educated classes of India take a keener interest than their Universities, and these far-reaching reforms were met, as was natural, with strenuous and widespread criticisms. The Government were charged with unduly Anglicising and officialising the Universities, the provisions of the bill were discussed with great ability and pertinacity by the Indian members of the Legislature, and the last stage of the measure occupied three long sittings of the Legislative Council.

Lighthouses.—The Madras Coast Lights Act, 1904 (No. 9), meets the cost of lighthouses by levying dues on vessels, of thirty tons and upwards, deriving benefit from the lights.

Co-operative Credit Societies.—The Co-operative Credit Societies Act, 1904 (No. 10), is a very interesting experiment on an important and difficult subject. The object of the Act, as stated in the preamble, is to encourage thrift, self-help, and co-operation among agriculturists, artisans, and persons of limited means, and for that purpose to provide for the constitution and control of co-operative credit societies. A co-operative credit society under the Act must consist of ten or more persons above the age of eighteen years, residing in the same town or village or group of villages, or, subject to the sanction of the registrar, consisting of members of the same tribe, class,

or caste. (Of course these restrictions to small areas or groups are based on the Raiffeisen principle.) A society may be either rural or urban. In a rural society not less than four-fifths of the members must be agriculturists. In an urban society four-fifths of the members must be non-agriculturists. Registrars are to be appointed by the local Governments, and registration of a society confers on it the benefit of incorporation. In a rural society the liability of members is, save with the special sanction of the local Government, unlimited. In an urban society the liability is either unlimited or limited as provided by by-laws or by rules under the Act. In a rural society no dividend or payment on account of profits is to be paid to a member, but all profits are to be carried to a reserve fund. In an urban society one-fourth of the profits of each year is to be carried to the reserve fund before any dividend is paid. A society may receive deposits from members without restriction, but its power to borrow from outsiders is to be regulated by by-laws and rules. A society may not lend except to a member, or, with the sanction of the registrar, to a rural society. Except by permission of the registrar, given by general order in the case of each society, a rural society may not lend on the security of movable property. The lending of money on mortgage of land may be prohibited or restricted by order of the local Government. (The propriety of allowing loans on the security of jewels and of land was much discussed, and was eventually left to be settled locally.) Where the liability of the members of a society is limited by shares, the maximum portion of capital to be held by a single member is limited by rules, and must not exceed one-fifth, and the voting power of each member is to be prescribed by the by-laws. Where the liability is not limited by shares, no member is to have more than one vote. Subject to Government claims, the claims of a society have priority against crops, agricultural produce, cattle, implements, and raw material, and there is power to exempt societies from income tax, stamp duty, and registration fees. The Act being experimental, its provisions are designedly very general and elastic. Much is left to rules and by-laws, and a very free hand is given to the registrar, on whose personality much will depend. If he is a man of energy and judgment, he may possibly find himself able to do for his district the same kind of work as has been done by Schulze, Raiffeisen, and Luzzatti in different parts of Europe. Those who are interested in the subject will find the speeches in Council of Sir Denzil Ibbetson and of Mr. Gokhale, on this occasion a friendly and sympathetic critic of the Government, profitable reading. In the course of the debate reference was made to Mr. Henry Wolff's well-known work on People's Banks, to the valuable report presented to the Madras Government by Mr. (now Sir Frederick) Nicholson, and to Mr. Dupernex's book on People's Banks in Northern India.

Sugar Duties.—The Indian Tariff Act, 1904 (No. 11), revives and continues the power "to levy special duties on sugar imported from countries

which, by maintaining high protective duties, render possible combinations to manipulate the price of sugar." It would seem that, in the opinion of the Government of India, legislation of this kind is still necessary notwithstanding the Sugar Convention.

The five other Acts passed by the Governor-General in Council in 1904 are of minor importance and interest.

2. MADRAS.

Acts passed—4.

Impartible Estates in Land.—The Madras Impartible Estates Act, 1904 (No. 2), declares certain estates, specified in a schedule, to be impartible, and makes the proprietor of an impartible estate incapable of alienating or binding by his debts the estate or any part thereof, unless the alienation is made, or the debt incurred, under circumstances which would entitle the managing member of a Hindu family, not being the father or grandfather of the other co-parceners, to make an alienation of the joint property, or incur a debt, binding on the shares of the other co-parceners independently of their consent. The proprietor is, however, expressly given powers of granting sites for public institutions and of leasing. The object of the measure was stated by Lord Ampthill to be to prevent the dismemberment and disintegration of ancient estates and ancient families. For the earlier history of this legislation see previous numbers of this Journal, vol. v. p. 337; vol. vi. p. 338.

Municipal Government.—The Madras City Municipal Act, 1904 (No. 3), is a bulky Act of 473 sections with 18 schedules which consolidates previous Acts with amendments, some of which gave rise to considerable discussion in Council.

The other two Madras Acts are of minor interest.

3. BOMBAY.

Acts passed—4.

Interpretation.—The Bombay General Clauses Act, 1904 (No. 1), corresponds to the English Interpretation Act, and its object is to make the language of Bombay enactments shorter and more uniform. Similar Acts have been passed for India by the Governor-General's Council and by some of the other local legislatures.

Motor Vehicles.—The Bombay Motor Vehicles Act, 1904 (No. 2), regulates the use of motor vehicles throughout the Bombay Presidency. It requires annual licences, and conviction for certain offences may involve the suspension of, or disqualification for the grant of, a licence. But matters

like speed, display of numbers, use of horn or bell, and carrying of lights are left to be dealt with by rules made by the local Government.

Land Tenure.—The Khotí Settlement Act Amendment Act, 1904 (No. 3), amends an Act of 1880, which regulated the conditions of what is known as the Khotí tenure of land in the Ratnágiri district of Bombay. The Ratnágiri Khots are large landholders, occupying the position of middlemen between the Government and the actual cultivators of the land. Their position as proprietors or quasi-proprietors has given rise to questions of the same class as those which have arisen with respect to the zemindars of Bengal. The Act of 1880 settled many of these questions, and the provisions of the Act of 1904, though they excited much local interest, are too technical for the general reader.

Municipal Government.—The main objects of the Act (No. 4) to amend the Bombay District Municipal Act, 1901, appear to have been to enable municipalities (1) to define standards of weights and measures, and (2) to authorise what are called "shop-boards" projecting from shops into the streets.

4. BENGAL.

Acts passed—3.

Tramways.—Act No. 1 adds two words to the Bengal Tramways Act, 1883.

Public Parks.—The Bengal Public Parks Act, 1904 (No. 2), gives power to make rules for regulating the use of public parks and gardens, in other words, gives legal power for doing what had previously been done by rules without express legal power.

Family Settlements of Land.—Under Hindu law property rights cannot be conferred on unborn persons, and consequently settlements after the English fashion cannot be created. The Bengal Settled Estates Act, 1904 (No. 3), enables landholders to obtain from the local Government power to create settlements tying up their land for three generations. The measure appears to have been asked for by large landowners, and hope was expressed that it would perpetuate ancient houses and create a substantial middle-class. Reference was made to the utility of the English law in stimulating younger sons to independent exertion.

5. UNITED PROVINCES.

Acts passed—3.

Interpretation.—The United Provinces, like Bombay, have passed a General Clauses Act (No. 1).

Benares Family Domains.—The Benares Family Domain Act, 1904

(No. 3), exempts the Family Domains of the Raja of Benares from the operation of the general laws relating to the imposition of rates on land or the disposition of the proceeds of such rates, and makes special provisions on these subjects.

6. PUNJAB.

Acts passed—2.

Limitation of Suits.—The Punjab Loans Limitation Act, 1904 (No. 1), alters the general Indian law by making special provisions for the limitation of suits for the recovery of money due on account of money lent or advanced, or on an account stated, or in respect of goods supplied, or on bonds, bills of exchange, or promissory notes.

Colonisation.—Act No. 2 makes some amendments in the Act of 1902 for regulating the colonisation of what is called the Sind-Sagar Doab, a tract of land situate between the River Indus and the Rivers Jhelum and Chenab.

7. BURMA.

Acts passed—3.

Security for Good Behaviour.—The Rangoon Police Act Amendment Act, 1904 (No. 1), gives power to require security for good behaviour on convictions for certain offences.

Dramatic Performances.—The Burma Towns and Village Laws Amendment Act, 1904 (No. 2), regulates the holding of *pwés*. *Pwé* is defined as meaning "a puppet-show or other theatrical or dramatic performance, or a native cart, pony, boat or other like race, held for public entertainment, whether on public or private property," and its meaning may be extended by notification to other classes of public entertainments or assemblies.

Intoxicating Spirits or Drugs.—The Burma Excise Law Amendment Act, 1904 (No. 3), enables the local Government to extend the statutory meaning of the term "intoxicating drug," imposes penalties on the sale of spirits or drugs during prohibited hours, and gives further powers over licensed vendors of spirits and drugs.

8. REGULATIONS UNDER 33 VICT. C. 3.

Regulations made—5.

Alienation of Land.—Regulation No. 1 modifies the Punjab Alienation Land Act, 1900, in its application to the North-West Frontier Province.

Sonthal Settlement Regulation.—Regulation No. 2 provides for the

recovery of expenses incurred in making a settlement of land in the Sonthal Parganas for the purposes of a record of rights.

Adjustment of Rents.—Regulation No. 3 modifies the Punjab Tenancy Act, 1887, in its application to the Hazara District, by making special provision for the adjustment of cash rents.

The other two Regulations also make modifications of laws applied to less advanced districts.

III. EASTERN COLONIES.

1. HONGKONG.

[*Contributed by* Sir William M. Goodman, *ex-Chief Justice.*]

Ordinances passed—16.

Two of the sixteen Ordinances passed in 1904 relate only to the appropriation of revenue for the public service. These are Nos. 6 and 12.

Imbecile Persons (No. 1, amended by No. 15).—The Imbecile Persons Introduction Ordinance, 1903 (which should have been dated 1904), as amended by Ordinance 15 of 1904, provides for the recovery of charges incurred by the Colony on account of lunatic, idiotic, or imbecile persons, not ordinarily resident in Hongkong, landed in the Colony, who become, within three months from the date of landing, a charge on the public. This provision does not apply where the Principal Civil Medical Officer of the port gives permission for such landing. If the officer refuses permission, the master of the vessel may require him to give a certificate of refusal, and power is given to the master to detain the imbecile on board. The liability to repay the charges is thrown upon the owner, charterer, agent, consignee, and master of the vessel bringing the person into the Colony.

S. 4 and the amending Ordinance enact that the provisions shall not apply to shipwrecked persons brought, without charge, by the master of a ship other than that in which they were wrecked, nor to His Majesty's land and sea forces, nor to distressed British seamen, nor to natives of the Colony, nor to persons of Chinese nationality, nor to persons deported from China under the provisions of the China and Japan Order in Council, 1865.

Land Court Amendment (No. 2).—The New Territories Land Court Further Amendment Ordinance, 1904, amends the Constitution of the Land Court appointed, by Ordinance No. 18 of 1900, to deal with claims

in relation to land in the new territories acquired by the Colony under the British Convention with China of 1898.

Pilots (No. 3).—The Pilots Ordinance, 1904, does not make the employment of pilots compulsory, but it inflicts a penalty on any person who acts as pilot upon any ship to which he does not belong, without being duly licensed. It provides for the granting of certificates of competency and licences by the Harbour Master to persons who have satisfied the Board of Examiners, and for the making of regulations for the proper conduct of pilots in all matters relating to their duties, which regulations must be observed under penalties for infringement. The rate of fees to be paid for licences may be fixed by Order in Council.

Provision is made for the punishment of offences by pilots, in certain cases, by the magistrate, while other more serious offences are made misdemeanours punishable with fine and imprisonment by the Supreme Court. Offences may also involve cancellation or suspension of certificate by the Harbour Master.

S. 7 provides for the recovery of pilotage dues, and s. 8 renders pilots demanding higher rates than those authorised liable to a penalty, on summary conviction before a magistrate. In exercising summary jurisdiction under the Ordinance the magistrate may, if he thinks fit, call upon the Harbour Master or Assistant Harbour Master to sit with him as assessor. Authority is also conferred on the magistrate to deal with claims brought against any ship carrying a pilot for damage done by the ship to any beacon, buoy, harbour mark, mooring, or other Government property. Such claims are to be made by the Harbour Master by way of complaint in writing setting out the damages, on which the magistrate may issue a summons requiring the attendance of the person complained against.

S. 12 defines "ship," as used in the Ordinance, as including every vessel over one hundred tons register propelled by sail, and steam-vessels of sixty tons and upward, and s. 13 excludes vessels of war and vessels belonging to the Colonial Government from the application of the Ordinance.

Reservation of Residential Area (No. 4).—The Hill District Reservation Ordinance reserves a certain portion of the Hill District, above the 788 feet contour and lying to the west of a certain line drawn north and south, in the Island of Hongkong, for residence by persons other than Chinese. Climatic conditions have induced many non-Chinese, especially in summer, to live up on the higher level of the hills at the back of Victoria, the crowded capital of Hongkong. Space, there, is limited, and the Chinese have hitherto shown little desire to leave the town and lower spurs of the Peak. The Ordinance prohibits the letting of land or buildings in the reserved area to Chinese, and also prohibits the residence of Chinese therein, with the exception of servants and some others. Power is, however, conferred on the Governor in Council to exempt any Chinese from the operation of the Ordinance on such terms as may be thought fit. By

s. 6, contravention of the Ordinance may be restrained by injunction. This is an Ordinance of a somewhat unusual kind, but it is called for by exceptional local circumstances.

Criminal Procedure Amendment (No. 5).—The Criminal Procedure Amendment Ordinance, 1904, contains only two sections. It is to be read with the main Criminal Procedure Ordinance of 1899, and its second section enables a person committed for trial for an indictable offence, but against whom the Attorney-General has declined to file any information, to be discharged, without having to await the next monthly criminal session of the Supreme Court. In Hongkong, all informations in that Court for criminal offences are filed by the Attorney-General, and his refusal to do this in any case has the same effect as the refusal of a grand jury in England to find a "true bill." The Ordinance enables the Attorney-General to issue a warrant (as in Form A) to the Registrar, who may thereupon issue, under his hand and the seal of the Court, a direction (as in Form B) for the discharge of the accused.

Internment of Refugee Combatants (No. 7).—The Internment of Refugee Combatants Ordinance, 1904, was passed to deal with the case of persons belonging to the forces, naval or military, of Russia and Japan, who, during the war, sought refuge under the jurisdiction of the British Crown and came within the Colony of Hongkong or the waters thereof. The Ordinance confers power on the Governor to "intern" such persons—that is, to confine them anywhere within the Colony or its waters. Authority is given to the Governor in Council to make regulations, which are to be gazetted, prescribing the place and conditions of such internment and providing for the maintenance of order and discipline among such interned persons, as well as for penalties for any breach of such regulations. Penalties are also imposed upon interned persons attempting to escape, who are made liable to fine or imprisonment for any term, not exceeding the period of internment, upon summary conviction before a magistrate. Penalties are also provided for those who assist any interned person to escape, or conceal such person; and power of search is given to British naval and military officers and to the police officers of the Colony in case of any escape.

Wild Birds and Game Preservation (No. 8).—The Wild Birds and Game Preservation (Amendment) Ordinance, 1904, is to be read with the principal Ordinance passed in 1885. It prohibits the offering for sale of any pheasant or partridge from March 1 to the end of September, and it also prohibits the offering for sale, or the possession for the purpose of sale, of any *live* pheasant or partridge, at any time, without the special licence of the Captain Superintendent of Police.

Tung Wah Hospital (No. 9).—The Tung Wah Hospital (Extension of Powers) Ordinance, 1904, is to be read with the principal Ordinance, No. 1 of 1870, and the Amending Ordinance of 1900. By the principal Ordinance of 1870, a Chinese hospital, called the Tung Wah, was established and

incorporated. It was in future to be supported by voluntary contributions. The present Ordinance extends the powers of the hospital to acquire, hold, mortgage, and sell lands and buildings, with the consent in writing of the Governor for the time being, and it quiets doubts as to the title of the hospital to certain scheduled leasehold properties which it had already acquired, the doubts having arisen as to whether it had the necessary power to invest its money in that way. The Ordinance also provides how deeds, etc., requiring the seal of the hospital are to be executed.

Prepared Opium (No. 10).—The Prepared Opium Ordinance Amendment Ordinance, 1904, is to be read and construed as one with the Prepared Opium Ordinance, 1891, which is the principal Ordinance. By that principal Ordinance, which deals with the Opium Farmer's monopoly as regards prepared opium, the words "prepared opium" are defined as opium which has been subjected to any degree of artificial heat for any purpose whatever, including dross opium, whenever such a construction is consistent with the context. For some time past difficulties have arisen with regard to various drugs and medicines containing opium, and the present Ordinance is intended to deal with those difficulties. It accordingly amends the principal Ordinance by giving an additional definition as follows: "The expression 'compound of opium' means any compound which does not come within the above definition of 'prepared opium,' and which contains opium, or any constituent or alkaloid thereof, however the original form of such opium may have been altered."

The Ordinance then provides for the granting of licences by the Governor in Council for importing, preparing, manufacturing, or dealing in compounds of opium, and forbids any but licensed persons doing any of these things. The annual fee of $25 for each licence is to go to the Opium Farmer.

The importer is required, under penalties, to make a true declaration, before the Superintendent of Imports and Exports, of the amount of opium contained in the compound imported, and pay a royalty thereon to the Farmer.

It is, however, provided that the Governor in Council may, at his discretion, exempt any *medicine* containing opium manufactured in, or imported from, Europe, America, or the British Colonies from the provision as to royalties. The name and description of any medicine so exempted is to be gazetted. To prevent hardship with regard to cases of importing for *export* elsewhere, bonded warehouses are to be established for the storage of compounds of opium imported, not for sale in the Colony, but for exportation, and power is given to the Governor in Council to make the necessary regulations with regard to such warehouses, which regulations are to be gazetted.

Protection of Women and Girls (No. 11).—The Protection of Women and Girls (Amendment) Ordinance, 1904, is to be read and construed with the principal Ordinance, No. 4 of 1897. It renders more efficacious the

provisions of s. 13 of that Ordinance, which deals with the closing of disorderly lodging-houses used by prostitutes and of brothels, by rendering the occupier and keeper of any such place liable to fine and imprisonment, with increased penalties for further convictions.

Chinese Emigration (No. 13).—The Chinese Emigration (Amendment) Ordinance, 1904, is to be read and construed as one with the principal Ordinance, the Chinese Emigration Ordinance, 1889. The object of this Ordinance is to give due effect to the convention between the United Kingdom and China respecting the employment of Chinese labour in British Colonies and Protectorates. With this object a new section is added to the principal Ordinance, which provides for the granting of a special licence, by the Governor, to any ship, for one round voyage from Hongkong to a specified port in South Africa and back thence to Hongkong, authorising the said ship to transport indentured Chinese emigrants to a specified British Colony or Protectorate in South Africa. No ship engaged in such transport may proceed to sea without such special licence, and no such licence is to be granted until the Emigration Officer has issued to the master a certificate stating that such master has complied with the regulations respecting such transport made or sanctioned by the Colony or Protectorate, and that the ship and her appointments accord with such regulations.

The form of certificate is contained in a Schedule.

Sugar Convention (No. 14).—The Sugar Convention Ordinance, 1904, gives effect to Article VIII. of the Brussels Sugar Convention, 1902, by prohibiting the importation of sugar from any foreign country, in any case in which it has been reported by the permanent Commission and notified in the *Gazette* that any direct or indirect bounty on the production or export of sugar is granted in that country. Power is given to the Governor in Council to make the necessary regulations and, in particular, for the purpose of requiring that the origin of all sugar imported into the Colony shall be proved by such certificate or other evidence as the said regulations may provide. The regulations are to be gazetted. It is also provided that any person committing a breach of the Ordinance or regulations shall, on summary conviction before a magistrate, be liable to a fine not exceeding $500 and to the forfeiture of any article in respect of which such breach is committed.

Church Property (No. 16).—The Church Property Vesting Ordinance, 1904, confers additional powers on the trustees of St. John's Cathedral Church in Hongkong. By the Ordinance of 1899 these trustees were constituted a body corporate and the cathedral and its site were vested in them. Difficulties have arisen, from time to time, in the case of other churches in the diocese of the Bishop of Victoria, from the death or absence of the trustees in whom any particular church might have been originally vested, years ago. The advantages of church trustees, in the East, being a corporate body are obvious, and, accordingly, the Ordinance confers on the

cathedral trustees power to acquire, hold, deal with, and dispose of land and other property for the purpose of promoting the work of the Church of England in Hongkong and China, whether such work shall be of a religious, educational, or social nature, or otherwise. S. 4 provides how deeds and other documents requiring the seal of the trustees are to be sealed and executed.

2. STRAITS SETTLEMENTS.

[*Contributed by* T. Baty, Esq., D.C.L.]

Ordinances passed—21.

Indian Immigration (Ord. 7).—The only Act of particular importance is an Ordinance "for the protection of Indian immigrants." It is a re-enactment with extensions in certain directions of the prior Act of 1899.

The main alteration is that whereas certain stringent provisions of the Act of 1899 applied to immigration for agricultural labour only, the corresponding provisions of the Act of 1904 extend to the treatment of agricultural produce, the construction of roads, canals, and railways, mining, quarrying, stone-breaking, and brick-making. The Governor always had power to declare any kind of work subject to these provisions of the earlier statute, and this power is retained under the new one. The Superintendent under the former Act might in case of illness or absence act by deputy. The employment of a deputy or assistant is now legalised subject to no such condition (s. 6); but it is not stated who can appoint such assistant officers, so that the Governor and Superintendent might come into conflict with regard to an appointment. Provision is made for the issue of fresh certificates to exempted (*i.e.* non-labouring) Indians, in case of the loss or destruction—(which may be wilful)—of the old one. The scheme of the old Act provided for the detention in hospital and the return to India of invalids on landing—all at the expense of the "employer." Owing to an alteration in the definitions in the new Act, the word "employer" no longer means the person in charge at the place where the contract "is to be" performed, but the person in charge of the work on which the immigrants "are" employed. Since they cannot be said to be employed until they reach their employment, it would seem that the expenses are no longer recoverable from the prospective employer.

Fines and imprisonment for refusing to carry out agreements on the faith of which a free passage has been granted, and for leaving or not entering places of detention are somewhat increased.

Regarding the duration of a contract to work (apparently at the specified kinds of work—agriculture, quarrying, etc.), the maximum period is changed from two years to 600 days. This involves the excision of provisions excluding from the two years those days on which the labourer was culpably

absent. But he is allowed to count among the 600 days not more than sixty on which he was absent through illness, and so in proportion for any less period. And he is not compellable to remain at the work after three years. The exemption for illness does not apply when it occurred by the immigrant's own fault (formerly his intemperance, immorality, or wilful misconduct).

The minimum rate of wages for the specified employments is no longer fixed, but is left to be fixed from time to time by the Governor, with the approval of the Legislative Council. Nor is it now to be fixed in currency, but in Indian money *plus* rations. Provision is made for children living with immigrants working at these employments, who are to receive proportional wages and rations.

An anomalous result of the old Act whereby no Indian immigrant could make a contract to work for more than a month except "subject to" that Ordinance is corrected. As contracts "subject to" the Ordinance were defined to be contracts for agricultural labour, it followed that immigrants could not make a contract for longer than a month's service at other employments at all. It is now provided that such contracts not "under the Ordinance" must be in writing.

An immigrant whose contract is thus "under the Ordinance," when he redeems his unexpired liability is expressly made liable to refund his passage-money (s. 44). On such a redemption he must always pay a minimum of $10—not, as formerly, a minimum of $20 and a maximum of $30. Power is now reserved to the Governor to vary the rates of redemption.

According to a new provision employers who engage Indian immigrants for work of the kind which would require a contract "under the Ordinance" if in writing (and it must be in writing if for over one month), must register the immigrant's name, last employment, and date and place of engagement. This need not be done if the engagement is by way of statutory contract: consequently it apparently applies only to short hirings.

There is no little uncertainty under both Acts (and particularly the old one) as to when they speak of immigrants labouring at the specified works and when of immigrants generally. The heading of Part VI. is "Treatment of Immigrants on Estates" in the old Act. In the new it is "at Place of Employment." "Place of employment" includes a place of labour "under the Ordinance," and also a place where twenty or more "free" immigrants are employed. The elaborate sections under this heading must therefore apparently apply only to immigrants under such conditions, and not to menial servants, shop assistants, and persons working in small factories.

The determination of the quality of rations is transferred from the Governor to the Superintendent, and the employer is no longer bound to supply them at market price, but at prices to be fixed by the Superintendent. Provision is made for inspection of new places of employment,

and the old power to the Governor to close an unhealthy estate under certain circumstances (which is continued) is supplemented by a new power to prohibit any further engagement of immigrants under statutory contract there. This power is exercisable by the Colonial Secretary or Resident Councillor, whenever the Superintendent is dissatisfied with the arrangements.

The definition of unlawful absence is made to refer to absence from the employment, instead of (as before) to absence from the estate during working hours. And the employer, who formerly had the option in cases of neglect of work or absence of deducting a day's pay, or of summoning the immigrant before a magistrate, may now do both.

Opium (Ord. 14).—The opium traffic is again responsible for legislation. Ordinance 14 repeals Ordinance 15 of 1903 (noted last year). It generally re-enacts its provisions with amendments, of which the principal is to render highly penal the possession (except by a chemist or by or under the direction of a qualified practitioner) of more than five grains of morphine, etc., or any mixture adapted for swallowing or injection which "may" contain more than five grains of morphine. Another clause makes it almost equally serious to be possessed of any morphine suitable for injection at all, or of a syringe. There is a sweeping clause under which a person who is merely "advising" the commission of an offence under the Act is liable to arrest without warrant.

A Foreign Corporation (Ord. 15).—A private Act was passed in order to enable a Netherlands banking company possessing no common seal to carry on business in the Colony. Reciting that the absence of a common seal renders the corporation unable to exercise divers of the powers which corporations having common seals can and may exercise, it enacts (1) that the company shall be capable to take, hold, and dispose of property, movable or immovable, for the purposes of its business; (2) that it may sue and be sued by its name; (3) and served at its office in the Colony where its business is carried on; (4) that it may substitute for a seal the hand and seal of the manager *pro tem.* of its agency at Singapore; (5) that this concession shall not come into operation until (*a*) the manager of the Singapore agency shall have an office for the transaction of the company's business there, with its name conspicuously painted up, the same name being similarly displayed at an office in each settlement where the company carried on business, and (*b*) a memorial shall be filed with the Colonial Registrar of Joint Stock Companies, verified by statutory declaration, giving scheduled particulars of the company's capital, paid-up capital, number and amount of shares, and situation of offices, with copies of the instruments establishing the company and of the rules for conducting its business, in original and certified translation. On a change of manager or of the facts stated in the memorial, a fresh memorial is to be filed, pending which the old manager is, in the former case, held to be still in office. The authority

of the manager and the authenticity of the documents is to be ascertained by the signature and seal of a Netherlands Minister of State, verified by a British Ambassador or Consular Officer, or else by the signature and seal of one of the Netherlands India secretaries at Batavia, countersigned by the British Consul there.

Miscellaneous Ordinances.—None of the other Enactments require more than a passing mention. Boatmen are made subject to the anti-leprosy Act of 1889 (Ord. 2). The cost of re-minting under the Currency Note Ordinance, 1899 (No. 4), as amended in 1903, is made the subject of amendment, and a further section (7 B) is introduced empowering the issue of notes in exchange for gold received in London or Singapore, such gold to form part of the Note Guarantee Fund (apparently whether such notes are issued upon its receipt or not) (Ord. 3).

Ordinance 7 extends the statutory powers of investment of moneys arising under a trust for sale under s. 39 of Ordinance 4 of 1886, and provides that a policy of insurance in favour of marital partner and (or) children shall create a trust, and not form part of the insured's estate, or be subject to his debts. The insured need not be married at the time of insurance.[1] Creditors have a right to recover out of the proceeds of the policy premiums paid in fraud of them. Provisions for appointing trustees and for investment are also contained in the Act, which enables the insured to appoint new trustees whenever he likes (but not to remove the old ones).

Quarantine is dealt with by Ordinance 9, which adds to the matters for which the Governor may make rules by Ordinance 19 of 1886, that of regulating the landing of animals brought by sea, and limiting their landing to specified places. It may be observed that he already had power to make rules "for prohibiting or regulating the landing of . . . animals from vessels either absolutely or conditionally," (cf. Ord. 19, 1886, s. 5 [2]).

S. 270 of the Civil Procedure Ordinance of 1878, directing certain practice summonses to be made returnable before the registrar, is repealed (Ord. 10).

The Volunteer Ordinance, 1888, s. 31—which was actually passed in 1895, but was directed to be quoted as if incorporated in the original statute of 1888—gave an exemption to volunteers from jury service: this is now qualified so as to enable them to be empanelled, in case of a deficiency, as special jurymen (Ord. 11).

[1] Cf. Married Women's Property Act (Eng.), 1870, s. 10.

3. FEDERATED MALAY STATES.

[*Contributed by* T. Baty, Esq.]

(i) PERAK.

29 Enactments.

Perhaps the most important of these (24) gave priority to Government debts over subsequent debts and claims of whatever nature, with a saving for registered mortgages of immovables. Two Enactments dealt with foreign relations: naturalisation (22) and extradition (29). The naturalisation oath is one of allegiance to the Sultan simply. Naturalisation operates only within the limits of the State, and does not extend to children, nor expressly to wives. It may be cancelled if fraudulently obtained. The extradition enactment incidentally amends the definition of "fugitive criminal" contained in the Criminal Fugitives Surrender Enactment, 1903 (noted last year). At the same time, the definition which includes "accused" persons under the description of "fugitive criminals" remains unaltered. With regard to fugitives from "the Colony" (which, from the title of the Enactment, appears to be the Straits Settlements), powers are given to extradite them if accused of crime. And powers are given to enable subpœnas issued in the Colony to be served in Perak on witnesses who are, or who are "suspected" of being, there, and making them liable to proceedings in Perak in default of compliance. Further provision is made (in case of reciprocity) for the execution of apprehension warrants in the Colony and in Perak interchangeably.

The only other Act which it will be necessary to notice in detail is the Mohammedan Laws Enactment (20). It applies to Mohammedans only, and attaches definite penalties to various breaches of Mohammedan law. Two Mohammedans are attached as assessors to the Court *pro re nata* in each such case, and may be required to give oral opinions, which are to be recorded. This provision does not apply to the offence of failure to attend the mosque and hear the Imam on Fridays. The duration of compulsory sermons is limited to one hour, and the fine for non-attendance is 50 cents. But it does apply to teaching religious doctrine without written permission from the Sultan, or teaching false doctrine (except in one's own family). Here the fine is $25. Incest is penalised by imprisonment for not more than five years (if the accused knew of or had reason to believe consanguinity); adultery with the wife of another (on similar conditions) by imprisonment for one year and $250 fine: the wife being liable to six months' "simple" imprisonment. An unmarried "girl" (not defined) absconding from "lawful guardianship" (not defined) for immoral purposes is liable to a maximum of one month's (and on subsequent occasions three months') "simple" imprisonment. Abduction of an unmarried girl is subject to a maximum of six months' imprisonment and a maximum fine of double

dowry. Breach of formal promise to marry entails mutual return of gifts and payment by the recalcitrant party of the value of the expected dowry. Mohammedan "priests" come as a novelty to the reader.

Enactments 10 and 14 provide for the establishment of a Government Officials Guarantee Fund and a register of imports and exports respectively.

The Trustee Investment Enactment, 1902, was repealed (Act 1), and Act 23 repealed fourteen obsolete laws ranging in date from 1878 to 1896.

Enactments were amended relating to volunteers, sanitary boards, probate, mineral ores, explosives, criminal procedure (two Acts), police, wild animals, alienation of land, mining, and prisons.

The existing labour codes were replaced by Enactments (11, 12, and 19) dealing respectively with general labour, Chinese mining, and Chinese agriculture. An amending Act (27) was also passed.

The Cruelty to Animals Enactment, 1903 (noted last year), was amended (by way of repeal and re-enactment).

The Railways Enactment, 1903, is amended by an Act (21) enabling the Resident-General to carry out work which a Railway Administration fails to commence within, and diligently to proceed with during, fourteen days after an appointed date.

A rule made under the Prisons Act as amended either introduces or leaves untouched the provision that the most trivial offences (*e.g.* "answering untruthfully any question put by an officer of the prison," "secreting any article whatever," "refusing to eat the food provided," "losing prison clothing," etc., etc.) may be visited with twelve strokes of a rattan: nor is there any provision exempting women, debtors, or unconvicted persons.

One somewhat startling result of such regulations appears to be that a person under remand would be liable to twelve blows of a rattan per question, for refusing to answer an inquisition into the details of his alleged crime.

(ii) SELANGOR.

26 Enactments.

Selangor followed Perak in all its amending legislation:[1] usually, as in that State, by the process of repeal and re-enactment. It also imitated its fresh enactments, except that relating to naturalisation. It adopted three additional Acts of some little importance: one (24), an Indian Immigration Act precisely similar to the Straits Ordinance above referred to; another, (11) an Enactment regulating opium and gaming farms, on the lines of the Perak Act of 1903; and another, noticeable as a sign of the times (21), authorising a rate not exceeding 2 per cent. in Quala Lumpor (the capital of the Federation), and 1 per cent. in Sungei Besi, on the annual value of land and houses in those towns for purposes of education.

[1] The Resident does not appear to have made rules of the severity of those current in Perak.

(iii) NEGRI SEMBILAN.

27 Enactments.

This small confederation also followed Perak in its legislation, including that as to naturalising foreigners. The oath in the case of naturalisation is rather curiously directed to be taken in favour of the presiding chief, although all the ruling chiefs are associated with him in the government. Negri Sembilan also passed an Indian Immigration Act, like Selangor; and on its own account passed a Burials Act.

(iv) PAHANG.

19 Enactments.

The Perak legislation was supplemented by an Indian Immigrants Act and a Burials Act; but the backward state of the country seems to be the reason why the following enactments were not imitated: those relating to Volunteers, Mineral Ores, Labour, Naturalisation, Railways, and Wild Animals. The last Enactment (a game law) must be carefully distinguished from the Cruelty to Animals Act, which was duly amended as in Perak.

4. MAURITIUS.

[*Contributed by* Mr. Justice A. Wood Renton.]

The legislation for this year has already appeared, see No. XIV. 347–52.

IV. AUSTRALASIA.

1. COMMONWEALTH OF AUSTRALIA.

[*Contributed by* Herman Cohen, Esq.]

Acts passed—Public, 13.

Commonwealth legislation for 1904 consists almost wholly of Acts of Supply or of Appropriation.

Interpretation of Acts.—No. 1 is a statute "for the Interpretation of Acts of Parliament, and for Further Shortening their Language," but some sections have an interest much greater than is usually found in such enactments. Thus s. 4 runs; "Offences against any Act which are punishable by imprisonment for a period exceeding six months shall, unless the

contrary intention appears in the Act, be indictable offences." Conversely, statutory offences not so punishable or not punishable by imprisonment and not declared to be indictable are within summary jurisdiction, unless it is otherwise enacted. Another innovation is s. 8, viz. "Any attempt to commit an offence against any Act shall, unless the contrary intention appears in the Act, be an offence against the Act, punishable as if the offence had been committed." Obviously it was intended expressly to exclude the common law.

Seat of Government (No. 7).—This Act determines that the seat of Government shall be within seventeen miles of Dalgety in New South Wales. The Federal territory within which it is situated is to contain not less than 900 square miles and to have access to the sea.

Industrial Arbitration.—The Commonwealth Conciliation and Arbitration Act (No. 13)—a trade union code—is the chief legislative work of the year. The title limits it to "disputes extending beyond the limits of any one State." It is a landmark in the history of the Commonwealth. The keynote is struck in s. 6 (1) which runs:

> No person or organisation shall, on account of any industrial dispute, do anything in the nature of a lock-out or strike, or continue any lock-out or strike. Penalty: one thousand pounds.

The chief objects are categorically set out in an early section (2)—a method not used in this country—thus:

> I. To prevent lock-outs and strikes in relation to industrial disputes.
>
> II. To constitute a Commonwealth Court of Conciliation and Arbitration, having jurisdiction for the prevention and settlement of industrial disputes.
>
> III. To provide for the exercise of the jurisdiction of the Court by conciliation with a view to amicable agreement between the parties.
>
> IV. In default of amicable agreement between the parties, to provide for the exercise of the jurisdiction of the Court by equitable award.
>
> V. To enable States to refer industrial disputes to the Court, and to permit the working of the Court and of State Industrial Authorities in aid of each other.
>
> VI. To facilitate and encourage the organisation of representative bodies of employers and of employees and the submission of industrial disputes to the Court by organisations, and to permit representative bodies of employers and of employees to be declared organisations for the purposes of this Act.
>
> VII. To provide for the making and enforcement of industrial agreements between employers and employees in relation to industrial disputes.

In the definition section (4) "industrial dispute" means not only what might be expected from the words, but also "a dispute in relation to industrial matters certified by the Registrar as proper in the public interest to be dealt with by the Court"; but disputes in agricultural, viticultural, horticultural, or dairying pursuits are excluded. "Organisation" means a registered body.

By s. 6 (2) proceedings for the penalty (s. 6 [1], *supra*) can only be taken by leave of the President of the Court. That section does not apply to anything done "for good cause independent of the industrial dispute," but the onus to show this state of things is on the defendant (s. 6 [3]). Employers or employees refusing to offer or accept employment upon the terms of an "industrial agreement," without reasonable cause or excuse, are guilty of a lock-out or strike (s. 7). Any organisation *ordering* its members to refuse to offer or accept employment for the purpose of enforcing compliance with the demands of employers or employed are so guilty (s. 8). Employers are not to dismiss employed merely because the latter is a member of an organisation or is entitled to the benefit of an industrial agreement, under a penalty of £20, and the onus is on the employer to show that he did not do so. SS. 9 and 10 provide the converse as to employed ceasing work.

Part III. (ss. 11-43) constitutes and regulates the Conciliation and Arbitration Court. It is to be a Court of Record and consist of one judge of the High Court, but he may appoint another as deputy. After seven years he may be reappointed, and can only be removed on addresses from both Houses to the Governor-General "on the ground of proved misbehaviour or incapacity" (s. 12 [1]).

S. 16 borrows a hint from French procedure: "The President shall be charged with the duty of endeavouring at all times by all lawful ways and means to reconcile the parties to industrial disputes and to prevent and settle industrial disputes, whether or not the Court has cognisance of them, in all cases in which it appears to him that his mediation is desirable in the public interest."

The Court may supersede any State industrial authority dealing with an industrial dispute (s. 20). In case of inconsistency between a Commonwealth and a State award the former shall prevail (s. 30). S. 22 secures that, as a general rule, no organisation can take an industrial dispute into Court without the consent of its members.

S. 25 states that in every case "the Court shall act according to equity, good conscience, and the substantial merits of the case, without regard to technicalities or legal forms, and shall not be bound by any rules of evidence, but may inform its mind on any matter in such manner as it thinks just." There is no appeal from the Court, but the President may state a case for the opinion of the High Court (s. 31). Security up to £200 may be demanded from any organisation bringing a dispute to the Court (s. 33). Assessors (presumably technical) may be appointed, one having common interests with employers and one with employed. Very large powers are conferred on the Court, including that of laying down a common rule for the future of an industry, by s. 38.

The Court may "prescribe a minimum rate of wages or remuneration," and, if it does, must, if asked, appoint some tribunal to fix "a lower rate in the case of employees who are unable to earn the minimum wage so

prescribed," and may "direct that as between members of organisations of employers or employees and other persons offering or desiring service or employment at the same time, preference shall be given to such members, other things being equal" (but such preference is hedged with many qualifications), and may "appoint a tribunal to finally decide in what cases an employer or employee to whom any such direction applies may employ or be employed by a person who is not a member of any such organisation" (s. 40). The President or duly authorised persons may inspect any work-place (including ships, etc.), the industry of or in which is the subject of dispute or where "any offence against this Act is suspected" (s. 41). Breaches of award or orders may be punished summarily (s. 44), and the penalties therefor may go either to the Consolidated Revenue Fund or to an organisation or person (s. 45). The *Taff Vale* case must have been present to the mind of the framer of s. 47, which enables "the property of any organisation or in which any organisation has a beneficial interest, whether vested in trustees or howsoever otherwise held," to be "hit." Where execution on such property is insufficient, the members are liable to a defined extent. For certain offences (generally, in the direction of obstructing industrial peace) the Court may deprive the offender of any benefits under this Act, may remove him from his position in his organisation, and prevent any payment to him from the funds thereof (s. 50). There may be a Principal Registry for organisations (s. 51) at the seat of government, and District Registries in each capital (s. 52).

Registration (ss. 55-60, Schedule B) is broadly on the lines of our Trade Union Acts, but there are vital differences. Employers must have employed on a monthly average a hundred persons in the aggregate in the given industry for the six months preceding before they can register their association, and not less than a hundred employees can register; no organisation can get any "preference" (*vide supra*) so long as its funds may be applied to "political purposes" or its members are *required* "to do anything of a political character." But "political purposes" do not include "obtaining or maintaining provisions applying to all persons in any particular industry" *without distinction between* union and non-union workers (as we should say) in respect of matters generally known here as "Factory Legislation," but including "the remuneration of labour," "protection of salaries and wages," "other conditions similarly affecting employment" (s. 55). Registration may be refused if members "might conveniently belong" to an organisation already registered in the State (s. 59).

The Registrar may apply to cancel registration in a wide range of cases, implying his right to take cognisance of the internal affairs of the organisation, *e.g.* if the rules "have not been *bona fide* observed" or "do not provide reasonable facilities for the admission of new members . . . or are in any way tyrannical or oppressive" (s. 60). The Governor-General may proclaim "any association" and thus make it an "organisation" under this Act (s. 62).

Organisations can only be sued for penalties in this Court. when it has jurisdiction (s. 67). But organisations may sue members for anything due under the rules in a court of summary jurisdiction (s. 68). Disputes between organisations and a member are to be decided under the rules: the Court may order any member to contribute—up to £10—to any sum which the Court has ordered the organisation to pay (s. 69). The Court may strike a member off the list (s. 70). "Industrial Agreements" may be made by any organisation with any other "or with any person for the prevention and settlement of industrial disputes by conciliation and arbitration" (s. 73), for not more than three years (s. 75), but if no time is limited, then until notice by some party (s. 81). Duplicates must be filed with the Registrar (s. 76). Penalties for breach of such agreements (if not fixed therein): by organisations up to £500, by employers £250, by employees £10 (s. 78). No judge is bound to accept any appointment under this Act (s. 82). (1) "No evidence relating to any trade secret, or to the profits or financial position of any witness or party, shall be disclosed except to the Court or published without the consent of the person entitled to the trade secret or non-disclosure. Penalty: five hundred pounds or three months' imprisonment." (2) "All such evidence shall, if the witness or party so requests, be taken in private" (s. 85). Contents of books and documents in evidence are not to be made public without the permission of the Court (s. 86). Persons or organisations "directly or indirectly concerned" in any offence against this Act or counselling, taking part, or encouraging such are deemed to have committed that offence (s. 87). Despite a provision of Act No. 1 (*supra*) it is enacted that an attempt to commit an offence against this Act is deemed that offence (s. 88). The Governor-General may make regulations (not inconsistent with the Act): among others, those "necessary or convenient to be prescribed for giving effect to this Act."

Defence.—All other Acts of 1904 are financial except No. 12, which amends the Defence Act of 1903 (see XIV. *Journal of Comparative Legislation*, p. 355). In an Appendix to the 1904 Statutes the Act of 1903 *as amended* by this of 1904 is printed—a very convenient method in important statutes. The amendments are not of general interest.

2. NEW SOUTH WALES.

[*Contributed by the* PARLIAMENTARY DRAFTSMAN.]

Claims against the Government and Crown Suits (No. 4).—In the year 1860 the Legislature of New South Wales, finding that "the ordinary remedy, by Petition of Right, is of limited operation, is insufficient to meet all such cases, can only be obtained in England, and is attended with great expense, inconvenience, and delay," passed an Act, 20 Vict. No. 15, to enable the subject to obtain redress from the Colonial Government in cases of dispute

touching any claim. This was repealed by the Claims against the Government Act of 1876, 39 Vict. No. 38, which provided that an aggrieved subject could bring an action against the Government, represented by a nominal defendant, provided he have "any just claim or demand whatever" against the Government. All enactments relating to claims against the Government were consolidated in 1897 by 61 Vict. No. 30. This present amending Act provides that the death of a nominal defendant shall not cause an action to abate (s. 2). The Governor shall appoint a nominal defendant within fourteen days of the commencement of the Act if the original defendant should die before such date (sub-s. 1), and within fourteen days of the death of a defendant dying after the passing of the Act (sub-s. 2, s. 2). On such appointment of a nominal defendant all necessary amendments in the record in relation to the new name may be made by order of the Court or judge before which or whom the proceedings are pending (s. 4).

Ancient Lights (No. 16).—The English rule of law as to ancient lights, founded on the fiction of a lost grant, was declared to be in force in New South Wales by a decision of the High Court of Australia in the case of *Delohery* v. *Permanent Trustee Company of N.S.W.* (Commonwealth L.R. vol. i. 283). Previous to this (May, 1904) there had been no decision on the point: *obiter dicta* of the judges showed a difference of individual opinion on the subject. As the rule is opposed to the conditions of settlement in a new country, the above Act (assented to December 1, 1904) declares that the enjoyment of the access or use of light to a building for any period, or any presumption of a lost grant based on such enjoyment, shall not alone create a right to such access or use (s. 1). Legal decisions pronounced before the passing of the Act or actions pending in cases where the question of rights to light had arisen before the date of the Act, shall not be affected by the Act (s. 2).

Land and Income Tax (No. 17).—This Act declares that income tax shall be payable on interest owing and paid to a mortgagee of lands in New South Wales whether the interest is payable or the mortgagee is resident or the mortgage-deed is located within or outside New South Wales (sub-s. 1, s. 2): the amount of such income tax shall be deducted from the amount of the land tax payable by the mortgagor, and it shall be paid by the mortgagee if within the State, but if he be resident without the State it shall be paid on his behalf by the mortgagor out of moneys in respect of the interest due to the mortgagee (sub-s. 2, s. 2). In assessing the income tax for the year 1905, and subsequently, the taxable income for the year immediately preceding the year of assessment shall be the taxable amount for the year of assessment (sub-s. 2, s. 3). The first of the directions in s. 27 of the principal Act is repealed (sub-s. 1, s. 3). Under the principal Act (1895) it was provided by s. 53 that any amount of income tax paid by a taxpayer in excess of the sum properly chargeable

should be refunded, and that a taxpayer whose income in any year fell short of the sum in respect of which the tax for that year was paid, should obtain a refund of such overcharge; and that where income tax has been claimed and paid upon incomes within the exemption value, a refund may be made or exemption declared; with the provision that claims be brought within two years of the date when overpayment was made. This amending Act repeals the whole of s. 53, and re-enacts only the first part of it providing for a refund where the taxpayer has paid any amount of land tax as well as income tax in excess of the amount properly chargeable; and that claims be brought within three years of the date when the tax was due (sub-ss. 1 and 2, s. 4). Power is given to the Tax Commissioners to remit and refund fines (s. 5).

Infant Protection.—This Act repeals the Deserted Wives and Children Act, 1901, so far as it relates to complaints in respect of illegitimate children and proceedings consequent thereon.

Part II. constitutes the main body of the Act and is intituled "Maintenance of Infants." It deals with proceedings (*a*) before birth, (*b*) after birth.

(*a*) When any single woman is with child by any man who has made no provision for the expenses consequent on its birth or for its future maintenance, she, or with her consent the Chief Officer or any other reputable person on her behalf, may make complaint in writing on oath to any magistrate. The magistrate may thereupon summon the man to answer the complaint; or if necessary the magistrate may issue a warrant for the man's apprehension. The Court is then to hear and determine so much of the complaint as relates to the paternity of the infant, and may order the defendant to deposit a sum of not less than £20 for expenses in connection with the birth of the child, and further order the defendant to enter into recognisances to appear on a day fixed within four months of the birth of the infant, and show cause why he (defendant) should not make adequate provision for the maintenance and education of the infant after it has reached the age of three months. The Court may enforce compliance with the order by sending the defendant to prison for twelve months.

(*b*) When the father of an illegitimate child has left it without means of support, a complaint may be lodged in the same way, and the Court may order the defendant to pay a sum for the maintenance and education of the infant and for expenses in connection with the birth. When necessary the Court may order payment of the funeral expenses of the mother and child. The mother may be ordered to contribute to the expenses of maintenance of the infant if she is able. The maintenance may be continued till the child is fourteen if a male and sixteen if a female. The order of the Court may be enforced by seizure and sale of the defendant's goods, or by inflicting a fine of £50. If a defendant wilfully refuses or neglects to comply with an order and goes or attempts to go out of New South

Wales, he is guilty of an indictable offence and may be imprisoned with hard labour for twelve months. Persons who desert children in other colonies may be arrested in New South Wales. There is an appeal given to the Quarter Sessions or the District Court.

Part III. contains provisions for the control of places established or used for the reception of infants.

Part IV. provides that on the hearing of any complaint under the Act the public are not to be admitted to the Court.

Part V. provides that all penalties under this Act shall be imposed and recovered before the Court in the same manner as penalties are imposed and recovered under the Justices Act, 1902, and provides also that the Governor may make regulations for carrying out the provisions of the Act.

Sydney Harbour Rates Act (No. 26).—The Sydney Harbour Trust Act (referred to in the present Act as the "principal Act"), although not assented to until February, 1901, and published as Act No. 1, 1901, has received the short title of "Sydney Harbour Trust Act, 1900." Similarly the Wharfage and Tonnage Rates Act, although not assented to until January 24, 1902, and published as Act No. 16, 1902, has received the short title of the "Wharfage and Tonnage Rates Act, 1901." In the Act under consideration the above-mentioned erroneous short titles are made use of.

The Act empowers the Sydney Harbour Trust Commissioners constituted under the Sydney Harbour Trust Act (No. 1, 1901) to collect harbour rates on goods brought by sea into the Port of Sydney. The amount of such rates is not to exceed one-half of the inward wharfage rates specified in the schedule to the Wharfage and Tonnage Rates Act (No. 16, 1902). The rates fixed are payable by the owners or consignees of the goods within forty-eight hours of landing or transhipment under a penalty not exceeding £50.

Goods arriving from any of the Australasian Colonies or New Zealand are, if entered for transhipment, exempt from wharfage rates under the Wharfage and Tonnage Rates Act, and paid no charges until the passing of the present Act. The present Act imposes upon all goods transhipped in the port a charge of one-half the harbour rate in case the goods are transhipped within fourteen days and the full harbour rate when the fourteen days are exceeded. Where wharfage rates are payable in respect of goods which have already paid harbour rate, the harbour rate is to be deducted from the wharfage rate.

The Act also authorises the imposition of tonnage rates on a fixed scale upon all vessels (except those under 240 tons and lighters), payable by the owner or agent before the vessel leaves port under a penalty not exceeding £100. The Commissioners are also empowered to make regulations for collecting tolls or charges on berthing from vessels in respect of which tonnage rates are not leviable, either in the form of fixed charges or of licences for a definite period.

Leases of docks, piers, etc., granted by the Commissioners are saved from the operation of the Act.

For the purpose of securing the payment of rates, the Commissioners may make regulations, particularly to prevent the removal of goods; and all manifests must be lodged by masters within twenty-four hours after entering the port under a penalty of £100. Power is also given to enter any place having a frontage to the port and inspect goods landed.

Tonnage is to be calculated in accordance with the Imperial Merchant Shipping Act, 1894, and the latest "Lloyd's Register" is made evidence of such tonnage.

Coroners.—The Coroners' Court Act provides that all inquisitions hitherto required to be held before a coroner and a jury shall be held before a coroner sitting alone, and for that purpose confers upon a coroner when sitting alone all the powers hitherto vested in him or the jury.

The general enactment is subject to a proviso requiring an inquisition to be held before a coroner and jury (*a*) on the request of a relative of the deceased, or the secretary of any society or organisation of which the deceased was a member at the time of his death; or (*b*) on the order of the Minister of Justice.

Mines.—This Act amends the Mines Inspection Act of 1901. Where the amount of wages paid to a miner depends upon the amount of the mineral he contracts to get, he shall be paid according to the actual weight of such mineral put out by him unless the Minister for Mines, on the joint representation of the parties in the case of a mine employing not more than twenty persons underground, authorise some other method of payment.

By agreement between the parties deduction may be made in respect of substances other than the particular mineral sent out of the mine along with it.

Such miner may at his own cost appoint check weighers to see that the mineral is properly weighed.

Check weighers are to have all proper facilities for the fulfilment of their duties. Where the check weigher has been appointed by the majority of such miners he can recover from any one of them still employed on the mine his proportion of the check weigher's remuneration.

Check weighers are not to impede the working of the mine, and in case of misconduct can be removed by the order of the nearest Court of Petty Sessions.

State Debt and Sinking Fund Act.—The State Treasurer, the Chief Justice, the Speaker of the Legislative Assembly, and the Under Secretary to the Treasury are appointed Commissioners to manage the sinking fund constituted by the Act and certain trust accounts kept in the Treasury.

In lieu of the sinking funds established by various Loan Acts there is constituted a general sinking fund to which shall be paid each year

£350,000. The balances at credit of the old sinking funds are transferred to the general sinking fund and the old funds are closed.

The fund is to be used in paying off loans, and in the meantime may be invested by the Commissioners.

The trust accounts which by the Act are to be transferred to and administered by the Commissioners are mentioned in the schedule. They consist of moneys which under various Acts are held by the Government on trusts for private persons or corporations, or to answer claims which may be made by such persons or corporations, and provision is made for the investment of such moneys and for withdrawals for the purposes of the respective trusts.

Closer Settlement Act (No. 37).—This Act consolidates and amends the Closer Settlement Act, 1901. The object of both measures is to enable the Government to acquire private land and dispose of it to intending settlers in suitable sub-division blocks. The chief alteration in matter of policy is the mode of acquiring and of disposing of the land. Under the Act of 1901, the only mode of acquiring land was by purchase under contract made by the Government with the approval of the Parliament. These provisions are re-enacted with minor amendments in Part I. of the Act of 1904. But under Part II. of that Act the Government is authorised to take the land required compulsorily.

Under the Act of 1901, the land is disposed of in farms on a leasehold tenure of ninety-nine years. Under the Act of 1904 the settler obtains a conditional fee, which he may mortgage, and which, under the conditions of the Act, may be held by a transferee.

Part I. of the Act deals with the purchase of private land, and substantially re-enacts similar provisions of the Act of 1901.

Part II. deals with the resumption of private land, and is limited to land exceeding £20,000 in value, without the improvements thereon. The Minister is given power to notify the owner of an order of inspection, and after such notification the land shall not be disposed of so as to defeat the power of resumption, but such restriction shall cease if the land is not resumed within twelve months, or if the Governor removes the restriction.

The owner has a right to retain a part of his land not exceeding in value £10,000, exclusive of the value of improvements thereon, but the area and boundaries of the land to be so retained are to be as determined by the Closer Settlement Board. The owner may waive his right of retainer if he is dissatisfied with the finding of the board. The owner may also, where part only of a contiguous area is proposed to be resumed, require the whole to be taken.

The price is to be settled by the Closer Settlement Board subject to appeal to a Court consisting of a Supreme Court judge and two assessors, the latter to be appointed by the Governor and the appellant respectively.

If Parliament approves, the land is resumed by the Governor and thereupon vests in His Majesty.

Part III. deals with the mode of making payment for land acquired, and for interest and costs.

Part IV. provides for the disposal of the land acquired.

Lands acquired under the Act and adjacent Crown lands are to be classified as agricultural lands, grazing lands, and township settlement allotments, and sub-divided into suitable blocks. The plans and the values of the blocks are submitted by the board to the Minister and are conclusive.

The settlers who may apply for a block are any male person of or over eighteen years of age or female person of or over twenty-one years of age, but the latter must be either unmarried or widowed or living apart from her husband under an order for judicial separation. The person applying must not be the holder of any other land except town or suburban land, or land under lease or a settlement township allotment under the Act, or held as a tenant from a private holder. Where simultaneous applications are made for the same land, the local land board enquires in open Court into the merits of the applicants, and finally allows or refuses an application.

The conditions to be performed are :

(*a*) A deposit of 5 per cent. of the value of the land on application, and an annual payment of 5 per cent. of such value in respect of the purchase money and in respect of interest at the rate of 4 per cent. per annum, until the purchase money and interest are paid.

(*b*) Residence for ten years commencing within twelve months after the purchase or within a further time which the local land board may allow. The residence may be on any settlement purchase or township settlement allotment in the same settlement purchase area, or may be permitted in any adjacent village or town.

(*c*) Improvements to the value of 10 per cent. of the capital value of the land must be made within two years from the purchase, an additional 5 per cent. within five years from the purchase, and a further additional 10 per cent. within ten years from the purchase.

Provision is made by which the land shall not be held by a person not qualified to make application, and no transfer is allowed in contravention of this provision. But the land may be mortgaged, or may devolve on death; and special provisions are made by which the mortgagee or execution creditor may pursue his remedy against the property, and the personal representatives of a deceased or lunatic holder may perform the conditions annexed to the holding.

Grants are to be issued after fulfilment of conditions and payment

of purchase money. Non-fulfilment of conditions renders the holding liable to forfeiture.

Provision is made for the setting apart of lands for a township settlement to be divided into half-acre blocks and sold at auction. No person shall hold more three of such blocks, except as mortgagee.

Power is given to the Minister to grant annual leases in areas not exceeding 320 acres, until the land is required for settlement purchase. The rent is appraised by the land board.

Part V. contains miscellaneous and supplemental provisions and constitutes the Closer Settlement Board. The board consists of the president and commissioners of the Land Appeal Court and the chairman and members of the local land board for the land district in which the land under enquiry is situated.

The Act is administered by the Secretary for Lands.

3. QUEENSLAND.

[*Contributed by* W. F. CRAIES, ESQ.]

Acts passed—Public and General, 17; Local, 2; Personal and Private, 2.

Appropriation.—Nos. 1, 2, and 19 are Appropriation Acts.

Retrenchment.—No. 4 is a special Retrenchment Act providing for the reduction from October 1, 1904, to July 1, 1905, of the salaries paid out of State funds for the personal service of officers of the State, including the Ministers of the Crown and members or officers of either House of Parliament. S. 8 provides that any surplus in the State accounts shown on June 30, 1905, shall be appropriated so far as it will go in repaying to each person reduced under the Act the amount of the reduction less the income-tax which he would have had to pay but for the reduction, which tax is remitted by s. 7.

National Bank.—4 Ed. VII. No. 6 authorises the making of agreements for the more speedy repayment of sums due from the Queensland National Bank to the State, the capital of which sums under an agreement sanctioned by a statute of 1896 would not be repayable until 1918. The scheme involves the giving of promissory notes by the Bank for instalments of the debt (£1,463,000), for prohibition of all dividends till half the debt is paid off and limitation of the dividends to 3 per cent. till the rest is paid off, and for restrictions on alteration of the memorandum and articles of association of the Bank (s. 7).

Income Tax.—4 Ed. VII. No. 9 amends and continues the Income Tax Act of 1902.[1]

The most important changes are the abolition of the fixed duty of 10*s*.

[1] Journal, N.S. XII. p. 361.

levied by the act of 1902 on all incomes, even the smallest, and the creation of a progressive income tax. S. 7 repeals ss. 7 and 8 of the Act of 1902 and enacts that an income tax shall be levied, etc., on the annual amount of the incomes of all persons at the following rates:

(i) If the total income subject to the tax does not in the aggregate exceed £100, exempt.[1]

Provided that such exemption shall not apply to the incomes of companies or of absentees—*i.e.* persons not domiciled in Australia (s. 3).

Provided further that where the total income subject to the tax does not in the aggregate exceed £300, and such income is derived partly from personal exertion and partly from the produce of property, in deducting the £100 exempt the income derived from personal exertion shall first be resorted to.

(ii) On all income derived from personal exertion (*i.e.* earnings, salary, wages, allowances, pensions, superannuation, or retiring allowances earned in or derived from Queensland):

If the total income subject to the tax—

exceeds £100 and does not exceed the sum of £125, the fixed sum of 10*s.*

exceeds the sum of £125 and does not exceed £150, the fixed sum of £1.

(Where the income of a taxpayer does not exceed £150, sums expended by him in the maintenance or support of infirm, aged, or indigent relatives are exempt: s. 7.)

exceeds £150 and does not exceed £300, £100 exempt and 6*d.* in each and every £ over £100.

exceeds £300 and does not exceed £500, 6*d.* in each and every £.

exceeds £500 and does not exceed £1,000, 6*d.* in each and every £ of the first £500, and 7*d.* in each and every £ over £500.

exceeds £1,000 and does not exceed £1,500, 7*d.* in each and every £ of the first £1,000, and 8*d.* in each and every £ over £1,000.

exceeds £1,500, 8*d.* in each and every £.

(iii) On all income derived from the produce of property (*i.e.* income derived in or from Queensland and not derived from personal exertion, even if not derived from the taxpayer's own property):

If the total income subject to the tax—

exceeds £100 and does not exceed £120, the fixed sum of £1.

[1] Under the Act of 1902, 10s. was charged on incomes up to £100.

exceeds £120 and does not exceed £300, £100 exempt and 1*s.* in each and every £ over £100.
exceeds £300, 1*s.* in each and every £.

(iv) On the incomes of all companies and of all absentees, on the total income subject to the tax, 1*s.* in each and every £.

The income tax of a company which has its head office in Queensland is to be assessed at not less than the amount of the dividends declared during the year of assessment; if any profits remain undistributed, 6*d.* in the £ is payable thereon, to be allowed for against the tax payable on them when they are ultimately distributed. Special provisions are made for ascertaining the chargeable profits of companies which mine in Queensland.

The charges on companies are in lieu of the dividend duty imposed by an Act of 1890, (54 Vict. No. 10), and the companies which have their head office or chief place of business in Queensland are not allowed to distribute their dividends till they have paid income tax at the rate of 5 per cent. per annum thereon (s. 12).

There are a number of minor amendments as to the mode of calculating deductions and various other details in the Act of 1902.

Death Duties.—4 Ed. VII. No. 17, which was assented to December 17, 1904 (but took effect as from October 7, 1904), amends the law as to succession and probate duties contained in Acts of 1892 (56 Vict. No. 13) and 1895 (59 Vict. No. 28).

The definition of "succession" is extended so as to include dispositions made within twelve months of death and purporting to operate as immediate gifts,[1] but allowance is made for *ad valorem* stamp duties paid thereon (s. 4). Where a settlement contains a trust to take effect on the death of the settlor, the trustees, etc., must within six months of the death give to the Commissioners of Stamps notice of the settlement, of the property settled, and of its value (s. 5).

S. 7 (*inter alia*) adapts to Queensland the provisions of s. 7 (5) of the Finance Act, 1894, as to allowances for debts due to persons resident out of the State. Interest at 5 per cent. is payable on succession duty from the date of the death, or where the duty is payable in instalments, from the date when each falls due[2] (s. 8). Personalty comprised in a succession is valued as if it were a legacy by the predecessor to the successor (s. 12). Probates, etc., are not to issue till succession duty is paid or secured (s. 10). On the issue of probate or administration in Queensland, succession duty is chargeable although the testator or intestate was not domiciled in Queensland (59 Vict. No. 10, s. 2). And it has been found necessary to make further provision to secure the duties on shares entered on the branch registers out of Queensland of companies registered under the Queensland

[1] See the Imperial Acts of 1881 (44 & 45 Vict. c. 12, s. 38) and 1889 (52 Vict c. 7, s. 11 [1]).

[2] See Finance Act, 1896 (59 & 60 Vict. c. 28, s. 18).

Companies Acts, by requiring from the companies returns showing the date of the member's death and the nature and extent of his interest, and by requiring the company to pay the duty, with a consequent charge on the interest in question (s. 9).

S. 11 provides for the payment of succession duty in respect of shares held in "foreign" companies which carry on in Queensland the business of mining, pastoral or agricultural production, or timber getting. The companies must have a registered office in Queensland, must make returns as to the interests of deceased members, must pay the succession duty thereon subject to a charge in their favour on the interests for the duty paid, and if they do not pay can be treated as debtors to the Crown for the amount of the duty.

When any application is made to register interests in land subject to succession duty, the Registrar of Land Titles is to make on the register an entry, "Succession duty not paid," unless a certificate of payment is produced to him. This does not apply to mortgages (s. 13).

The Act of 1892 is repealed as to regulations and new provisions are made as to regulations as to officials, notices, forms, procedure, and penalties; and it is provided that in all Crown proceedings averments are to be treated as *primâ facie* evidence of the fact until the contrary is proved in the following cases:

(1) That any person executed any instrument.
(2) That any assessment or re-assessment has been duly made.
(3) That any requisite prescribed or satisfactory accounts, returns, or particulars have or have not been made or given; or
(4) That any duty has or has not been paid (s. 15).

The scale of probate duties established in 1892[1] is repealed, and the following scale substituted:

	£. s. d.
When an order to administer the goods or lands has been granted to the Curator of Intestate Estates and administration duty has been paid by him: Upon any subsequent grant . .	nil.
When a grant of probate has been made to one or more executors, with leave to another executor or other executors to come in and apply: upon any such subsequent grant . .	nil.
Any grant *de bonis non* when duty on the original grant has been paid in Queensland	nil.
When the net value of the property of the deceased person in respect of which the grant of probate or letters of administration is made does not amount to £300. . . .	nil.
When such value amounts to £300 or upwards, for every £100 or part thereof.	1 0 0

Note.—For probate and administration purposes, in estimating the net value of the property of the deceased person, there shall be included any accumulation of interest and any dividends, rents or other increments paid or accrued since the death of the deceased person and the date of application for the grant; for probate purposes no deduction shall be allowed on account of any debt secured by mortgage upon real property.

[1] Printed in Norman's *Death Duties*, p. 392.

Stamps.—4 Ed. VII. No. 14 amends the Stamp Laws in certain details.

S. 2 imposes penalties on persons who on transfer of a share or interest in any company registered under the Queensland Companies Acts or otherwise incorporated fail to give notice in a form prescribed. The object is to ensure payment of the stamp duty.

S. 3 deals with the mode of taking payment for documents required to be registered with clerks of petty sessions, mining wardens, or mining registrars.

S. 4 repeals the Stamp Act of 1903[1] and establishes a new scale of *ad valorem* stamp duties on receipts for money, and penalties for evading the duty.

S. 5 modifies the provision of the stamp Act of 1894 (58 Vict. No. 8) as to stamp duty on conveyances by imposing on the mortgagee stamp duty on conveyance or transfer of the mortgaged property from mortgagor to mortgagee, subject to a rebate to the amount of the mortgage duty paid in respect of the mortgage under ss. 65-9 of the Act of 1894.

Execution and Distress.—4 Ed. VII. No. 15 exempts from distress for rent any one sewing machine, typewriting machine, or mangle owned by or hired to a female (s. 1), and also exempts from distress for rent or execution by process issuing out of any Court against any householder the tools, necessary furniture, books for the education of the children, wearing apparel, and bedding of the householder, his wife and children to a value (inclusive of all but the children's books) not exceeding £10. The term "householder" includes occupier of the whole or part of any messuage or of apartments furnished or unfurnished therein (ss. 3, 4). Where such goods are levied on, the householder must deliver a schedule of the goods claimed to be exempt, but even if he does not the bailiff must still exempt goods of the kind and to the amount above stated (s. 5).

Agricultural Farms.—4 Ed. VII. No. 12 extends the operation of the special Agricultural Homesteads Act of 1901[2] so as to authorise the selection under the latter act of agricultural farms (not exceeding 640 acres) in the same manner as homesteads.

Marsupials.—4 Ed. VII. No. 16 continues for one year the operation of the Marsupial Boards Acts of 1897[3] and 1901.[4]

Dairy Produce.[5]—4 Ed. VII. No. 18 provides for the registration and inspection of dairies and other premises where dairy produce is prepared and manufactured for sale, and regulates the manufacture, sale, and export of dairy produce—*i.e.* milk and cream, butter, cheese, condensed milk, and any other produce of milk or cream (s. 2).

[1] Journal, N.S. XIV. p. 364.
[2] Journal, N.S. X. p. 269.
[3] Journal, O.S. vol. i. p. 51; N.S. vol. i. p. 105.
[4] Journal, N.S. X. p. 270.
[5] There has been prior legislation on the subject of meat and dairy produce: see Journal O.S. 1896 p. 176; N.S. X. p. 270.

It is made unlawful to employ in a registered dairy or factory persons not of European or aboriginal Australian descent, unless they can read and write from dictation words in the English language (s. 30).

4 Ed. VII. No. 11 provides for the repayment to persons taxed for purposes of the Meat and Dairy Produce Encouragement Acts, 1893 to 1901, of sums collected but not required for the purpose of making advances under those Acts.

Intoxicating Liquors.—Two Acts deal with the law relating to the sale of intoxicants. 4 Ed. VII. No. 10 deals with the registration of clubs, which had already been to some extent subject to the licensing laws.[1] The new statute is framed on the lines of the provisions as to clubs in the English Licensing Act, 1902 (2 Ed. VII. c. 28), and the Licensing (Scotland) Act, 1903 (3 Ed. VII. c. 25, s. 80), but is considerably more elaborate. 4 Ed. VII. No. 5 amends the former law[2] as to registration of premises of spirit merchants by referring all their applications for registration to the Home Secretary for allowance or rejection.

Bank Holidays.—4 Ed. VII. No. 8 repeals the Bank Holidays Act of 1877 (41 Vict. No. 13). Both the repealed and the repealing Act closely follow the model of the Imperial Act of 1871,[3] but that of 1904 contains a section (10) allowing any bank to close the head office or any branch on giving a public notice in the manner prescribed. The statutory bank holidays created are fourteen in number.

Land Banks.—4 Ed. VII. No. 13 amends the Agricultural Bank Act of 1901[4] by extending the purposes for which advances may be made—

(*a*) to payment of liabilities already existing on the holding;
(*b*) to agricultural, dairying, grazing, horticultural, or viticultural pursuits thereon;
(*c*) to adding to the improvements already made thereon; and
(*d*) to purchase of stock, machinery, or implements.

Advances are limited in cases (*a*) and (*d*) to 10*s.* in the £ on the fair estimated value of the holding, and in other cases to 12*s.* in the £ on such value. Advances may not be made to "aboriginal natives of Asia, Africa, or the Pacific Islands" (s. 3).

The Act also extends the operation of the principal Act to miners' homestead leases (ss. 9. 13), provides for the acquisition of the freehold of lands on which advances are made (s. 8), and makes further provisions as to interest, time of repayment, and perfecting the securities held on acquisition of the freehold by the borrower.

[1] See the Liquor Act of 1886 (50 Vict. No. 30), s. 18.
[2] Contained in s. 7 of the Liquor Act of 1886.
[3] 34 & 35 Vict. c. 17.
[4] 1 Ed. VII. No. 14: Journal, N.S. X. p. 268.

4. TASMANIA.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed—35; Public, 28; Private or Local, 7.

Elections.—No. 1 amends the Electoral Act, 1901.

Hawkers.—No. 4 prohibits hawkers from selling or carrying about spirits, wine, beer, or other liquors, or selling to any person any goods, wares, or merchandise after sunset and before sunrise on peril of a penalty of £20.

Revenue.—Nos. 5, 6, and 20 are Supply Acts.

Lotteries (No. 7).—This is a tax on betting as represented by the totalisator,[1] out of the moneys retained by any committee or stewards of a racecourse by way of commission on any money placed in the totalisator: 1 per cent. of the total sum of money placed in the totalisator is to be paid to the Treasurer of the State towards the Consolidated Revenue Fund, and the balance, after deducting the cost of working the totalisator, is to be appropriated solely for the purposes of promoting horse-racing on the racecourse on which such totalisator has been conducted or for maintaining and improving the racecourse.

Duties on Estates of Deceased Persons (No. 9).—This is an Act fixing the duties payable on the properties of deceased persons with the requisite machinery for working the Act. The duties are at the following rates: where the value of the property exceeds £500 and does not exceed £1,000, 2 per cent.; exceeds £1,000 and does not exceed £2,000, 2½ per cent.; and so on up to £100,000, when 10 per cent. is payable. Executors and administrators are to file statements of assets and liabilities. Probate is not to be granted till duty paid.

Property forming part of a *donatio mortis causa* is taxable. A power is given the Registrar to compromise duties.

Stamp Duties (No. 11).—This Act imposes a penalty on persons giving

[1] The totalisator is a system of betting very popular in Australia and other Colonies and also on the Continent under the name of the *Pari-Mutuel.* "Rows of offices," to quote the *Encyclopædia Britannica,* "are established behind or near the stands on each of which lists are exhibited containing the numbers of the horses that are to run in the coming race. At some of these the minimum wager is 5 francs, at others 10, 20, 50, 100, 500 and in some cases 1,000. The person who proposes to bet goes to the clerk at one of these offices, mentions the number, as indicated on the card, of the horse he wishes to back, and states whether he desires to bet on it to win or for a place only. He receives a voucher for his money. After the race the whole amount collected at the various offices is put together and divided, and the prices to be paid to winners are exhibited on boards. These prices are calculated on a unit of 18 francs. Thus if the winner is notified as bringing in 25, the meaning is that the backer receives his original stake of 10 francs and 15 in addition—the money being paid immediately by another clerk attached to the office at which the bet was made."

an unstamped receipt for an amount of £2 or upwards or for issuing a lottery ticket not duly stamped.

State Teachers (No. 13).—The object of this Act is the relief and maintenance of superannuated State teachers, and for this purpose a Board is incorporated and a fund created with the requisite machinery.

Women Barristers (No. 14).—Tasmania has by this Act recognised a woman's right to be admitted as a barrister, solicitor, proctor, or attorney, and to practise as such on the same terms as a man. But the Tasmanian woman barrister or solicitor does not thereby gain a right to claim admission as barrister or solicitor in any State or country where women are refused admission to the profession.

Taxation (No. 17).—This is entitled "An Act to levy a Tax upon Persons in proportion to their Means or Ability." It is a tax upon (i) occupiers and sub-occupiers of property throughout Tasmania, and (ii) upon lodgers not liable to be taxed as occupiers or sub-occupiers. "Lodger" means any person of the age of twenty-one years or upwards who resides with any occupier or sub-occupier as paying lodger or as employee receiving board and lodging as part payment for his services or as a member of the family who earns and enjoys an income in his own right, but does not include female domestic servants. The tax is to be paid upon the "taxable amount," which is, in the case of an occupier, the annual value of the property occupied; in the case of a lodger, the annual value of board and lodging. The rate of the tax is graduated. Where the taxable amount is under £60, the amount to be paid is 2*s.* 6*d.*; where over £60 and under £100, 1*d.* in the pound; where over £150 and under £400, 4*d.* in the pound.

Persons paying income tax are exempted. The rest of the Act (ss. 16-68) is machinery for assessment and collection.

Marine Boards (No. 18).—To encourage the resort of vessels to the ports of Tasmania all vessels arriving and sailing in ballast or which do not break bulk are exempted from payment of all port charges, lighthouse dues, and all port dues whatever, except pilotage where required and received.

The Act contains also provisions as to distribution of wharfage rates and power for the Marine Boards to fix such rates from time to time. Each such wharfage rate upon goods landed or shipped at any proclaimed port in Tasmania from or to any port or place within the Commonwealth of Australia is to be uniform.

No person not a certified engineer is to have charge of the machinery used in any steamship trading within the limits of any port, harbour, or river within the jurisdiction of any Marine Board unless he holds a certificate of competency or service granted by a Marine Board under the Act.

Cruelty to Animals (No. 21).—This is a consolidating and amending Act. "Animal" in it has a wide definition. It is to mean "mammal or bird, whether domestic or wild, and any other animal whatsoever if kept in confinement."

"Cruelty" also has a large signification. It is to mean "any act causing unnecessary suffering to any animal" and includes, among other things, flogging with unnecessary severity, or overworking any animal, using any animal when it cannot be used without causing it suffering which might be avoided, carrying any animal by land or water in such a manner as to cause it suffering which might be avoided, failing to supply any animal under the care of the person charged with an offence against this Act with a sufficient quantity of food or water, or killing any animal in an unnecessarily painful manner, but does not include acts usually and reasonably done with respect to animals, such as—among other things—hunting wild animals, branding, ear-marking, gelding, or spaying domestic animals, dishorning calves, or trapping or poisoning wild animals; provided that the person setting a trap which does not kill the animal removes the animal from the trap within a reasonable time, or using poison, uses a poison which will speedily destroy life if it be reasonably practicable to use such a poison. Any person who does or causes or procures any other person to do any act causing unnecessary suffering to any animal is to be deemed "guilty of cruelty" towards it. Any person who keeps or uses or acts in the management of any place for the purpose of fighting, baiting, or worrying any animal is to be liable to be punished in the same way as if he had been convicted of cruelty towards an animal.

Any constable may, upon his own view, or upon the information of any person giving his name and address, apprehend an offender against the Act and take him before before two or more justices of the peace, who may punish him in a summary way with a fine not exceeding £10 or imprisonment not exceeding one month. The offender where not the owner of the ill-treated animal may be ordered to pay, in addition to any fine, compensation not exceeding £20 to the owner.

A constable in apprehending an offender may detain the animal and vehicle, if there is one, as security. Diseased or injured animals may be destroyed.

Power is also reserved to the Governor to make regulations to prevent cruelty to animals while being landed from or taken on board any vessel or carried from one place to another.

Income Tax (No. 22).—This amends the Income Tax Act, 1902. It eliminates the clause charging income tax at the rate of 6*d.* per pound of the income derived from business, leaving the 1*s.* tax on income derived from property. A company carrying on business in Tasmania which has borrowed money on debentures, mortgages, or otherwise out of Tasmania is to pay income tax on the whole amount of interest payable in respect of such borrowed money, deducting the amount from the interest. Local bodies are also required to pay income tax on money lent them on debentures or other security. There is an exemption in favour of any debenture forming part of the funds of any society registered under the

Friendly Societies Act, 1888, or under the Trades Unions Act, 1889.

Loans for Public Works (No. 23).—This amends the Local Public Works Loans Act, 1890, by fixing the rate of interest to be paid by public bodies which have obtained an advance on a certain basis of calculation.

Parliament.—No. 24.

Game (No. 25).—The Game Protection Act, 1895, is amended in a few particulars. The most important is that extending protection to the nest, eggs, or young of a long list of wild birds—including crakes, plovers, rails, herons, petrels, penguins, partridge, grouse, bittern—enumerated in a schedule.

Main Roads (No. 27).—This Act defines the main roads of the Colony and fixes the contribution to be made to their maintenance by the trustees of the various Road Districts.

State Borrowing.—Nos. 29 and 30 authorise the inscription of stock for the purpose of borrowing for public works and loans.

Drainage.—No. 32 amends the Metropolitan Drainage Act, 1898, in various particulars, among others by providing for the drainage of groups of properties.

5. VICTORIA.

[*Contributed by* C. J. Zichy-Woinarski *and* W. Harrison Moore, Esqrs.]

Acts passed—65.

Conveyancing (No. 1953).[1]—The provisions of the English Conveyancing Acts of 1881, 1882, and 1892 have been enacted subject to certain necessary and other modifications, the principal of which are as follows :

(*a*) The Act is not to apply to land under the operation of the Transfer of Land Act, 1890, so far as it is inconsistent with that Act.

(*b*) The parts of the English Act of 1881 relating to rent-charges (Part X.) and long terms (Part XIII.) have been omitted as of no value in this State.

(*c*) The provisions in the English Act of 1881 enabling parties to a mortgage to omit the "receiver" clauses have not been copied, probably because mortgagees in this State have not hitherto shown any disposition to avail themselves of "receiver" clauses.

The section in the Vendor and Purchaser Act (England), 1874, providing for the determination in a summary manner of questions arising between vendors and purchasers has been embodied in the Act (s. 10).

[1] Contributed by W. Campbell Guest, Esq., author of *The Transfer of Land Act* (Victoria).

The Apportionment Act (England), 1870, forms Part IV. of the Act.

The English Act 37 & 38 Vict. c. 37 making appointments valid notwithstanding the exclusion of one or more objects is transcribed, and appears in the Act as s. 60.

The English Acts 30 & 31 Vict. c. 69 and 40 & 41 Vict. c. 34 declaring the meaning and extending the operation of Locke King's Act are included among the provisions of the Act (ss. 73-75).

The Contingent Remainders Act, 1877 (England), 40 & 41 Vict. c. 33, preserving contingent remainders from destruction by the determination of the particular estate in certain cases, has been copied (s. 77).

An important, and it is believed entirely novel, change has been made in the law affecting a mortgagee's right to sue on the covenant. The effect of the change is that after foreclosure absolute the right of a mortgagee to sue on the covenant for the money owing ceases irrespective of whether the mortgagee is or is not still in a position to restore the mortgaged property on payment being made.

The only other "new" legislation worthy of being mentioned is (*a*) a provision that a direction to pay debts in a will is not of itself to operate to charge real estate with debts in exoneration of specific bequests and other personalty. This was passed to correct the effect of a decision in the local Court. (*b*) A section to the effect that the term "month" when used in any document is to mean calendar month unless the circumstances otherwise require.

Carrum Advances (No. 1912).—Although this Act deals only with a particular locality, its provisions are of some general interest as illustrating the mode of assisting those affected by an unavoidable calamity. The locality was one which had been reclaimed from swamp and was being brought into cultivation. A disastrous flood, however, overwhelmed the settlement and did a vast amount of damage to struggling settlers. This is the condition of things with which the Act deals. It authorises the advance by way of loan of seed and (or) manure to enable any cultivator to cultivate his land. The advance is to be secured by mortgage of the land or by a preferential lien on the crops, and according as the security is the one or the other the advance may not exceed £50 or £30, and is to bear interest at 4 per cent.

The Government is to have priority over all other encumbrances, and no advance is in any case to be made until the mortgagee or other encumbrancer consents to this condition. There may be no distraint for rent or ejectment of any occupier whilst any crop raised from seed advanced under the Act is in the ground and not harvested. A penalty of £100 is imposed for using any order for seed or manure otherwise than for the purpose for which it is made, or for selling or otherwise disposing of seed or manure obtained.

Foxes Destruction (No. 1913) **and Wild Dogs** (No. 1908).—These Acts

testify to some of the pests from which cultivators suffer. The Governor in Council and municipal councils give rewards for the destruction of foxes attested by the production of a skin, which is then duly stamped to prevent its use for the same purpose again.

Artificial Manures (No. 1930).—This Act makes elaborate provision for securing that artificial manures shall contain the ingredients they ought and purport to have. Every sale of such manures is to be accompanied by the vendor's certificate of ingredients, to be a warranty of the truth of the matters contained therein. Official analysts are to be appointed to see that manures are of the prescribed standard, and power is given to them to enter upon all places where such manures are kept for sale to take samples.

The Act, which extends to thirty-six sections, is evidence of the healthy and intelligent interest now being taken in agriculture throughout the State, and of the great importance which during the last few years agriculturists have come to attach to methods of fertilisation to which hitherto little attention had been paid.

Land (No. 1957).—This Act contains a large number of amendments in detail of the (Consolidated) Land Act, 1901. It is arranged in four divisions—Crown Lands generally; Mallee Lands; Village Communities; General. Amongst other things it is provided that for the purpose of fulfilling the condition of occupation in occupation licences, residence on an agricultural or grazing allotment of a deceased licensee by his widow or child over eighteen years of age shall be deemed occupation within the meaning of the Act of 1901.

Closer Settlement (No. 1962).—This is a very important Act, the principal feature of which is expressed in s. 5—"For the purposes of closer settlement the Board (*i.e.* the Lands Purchase and Management Board constituted by the Act) may acquire and take for the Crown either by agreement or compulsorily blocks of private land in any part of Victoria." The compulsory power is very carefully guarded—it can only be exercised after a resolution of *both* Houses of Parliament, an authority which, having regard to the hostility of the Legislative Council to the principle of compulsory purchase, is hardly likely to be obtained for some years at any rate. Where the compulsory power is exercised, the price may be fixed by a Compensation Court presided over by a judge of the Supreme Court as umpire. An owner is to be entitled to select and retain part of his land to the value of £10,000 exclusive of buildings thereon; and in any case where it is proposed to take part of his land, may insist that the whole of the estate be taken. The purchase money for lands acquired under the Act may be paid either in cash or Government debentures or stock at the vendor's option; in any case the Government is authorised to issue stock against such purchases to an amount not exceeding £500,000 per annum in each of the five years following the passing of the Act; and this of course fixes the limit of the present experiment. The exercise

of the powers under the Act is entrusted to a Board of three persons, paid by fees limited in the case of each of them to £300 per annum. All lands acquired under the Act may be disposed of on conditional purchase leases as farm allotments or as allotments for workmen's homes, or as allotments for agricultural labourers; and the power to dispose of lands for the like purposes is extended with the consent of the Governor in Council to all unalienated and unoccupied Crown lands. The Board may clear, drain, fence, or otherwise improve any land prior to disposing of it in allotments. The value of the land to be disposed of under the Act is to be fixed at a rate sufficient to cover the cost of original acquisition of the land together with a sufficient sum added thereto to cover the cost of survey, sub-division, the price of so much land as shall on sub-division be absorbed by roads and townships and reserves, and the cost of clearing, draining, fencing, or otherwise improving such land by the Board, and any other costs incurred incidental to the acquiring and disposing of any such land and the cost of constructing roads to facilitate the disposal of any such land (s. 41). Farm allotments are not to exceed £1,500 in value, workmen's homes allotments £100, agricultural labourer's allotments £200. Such allotments are to be advertised; none may be granted to any person with a holding (other than of township land) over £1,500 in value or so as to increase his holding above such value; and no person may hold more than one allotment under the Act. S. 47 contains interesting provisions as to what is to happen in case more than one allotment does fall into the hands of one person. The price is to be paid by purchasers on such terms as may be agreed between them and the Board, but so that the payments shall not extend over more than seventy-three half-years, and shall include interest at not less than 4½ per cent. on any of the purchase money outstanding. The grants are subject to the customary conditions as to improvements; the purchaser is to reside for eight months in the year, and there may be no alienation within six years of the grant. The conditions as to workmen's home allotments require the purchaser to erect within a year "a substantial dwelling-house of the value of at least £50," and within two years to carry out further improvements valued at at least £25, and not more than one residence or place of business may be erected on one allotment (s. 50). In the case of an agricultural labourer's allotment, the purchaser must build a dwelling worth £30 within the first year and within the next enclose the allotment with a substantial fence (s. 51). Advances not exceeding £50, or 50 per cent. of the total cost, may be made to lessees of workmen's homes and agricultural labourers' allotments in aid of the cost of fencing the allotments and building dwelling-houses thereon. There is also power to erect (if the lessee desire it) cottages not exceeding £100 in cost, the amount thereof with 5 per cent. interest to be repaid in instalments extending over a term of not more than sixteen years. Neither of these powers may be exercised without the consent of the Governor in

Council. Small areas of land not exceeding half an acre may be sold to be used for various public purposes—"churches, public halls, butter factories, creameries, or recreation reserves." Land required for closer settlement and not taken up within two years is to be sold by auction and the proceeds paid into the "Closer Settlement Fund." The provisions for the recovery of arrears of payments are designed to place the matter beyond political influence and to ensure that due steps will be taken for the enforcement of the payments and the prevention of the accumulation of arrears, of which in the past history of land alienation the State has had too much experience. Whenever any instalment is three months in arrear and the prescribed fine is not paid, or whenever any instalment is twelve months in arrear, the Board shall certify the fact to the Auditor-General—an officer who holds office on a similar tenure to the same official in England—and it thereupon becomes his duty to forward a certificate to the Crown Solicitor, who must take the necessary steps to recover the arrears. Finally the Minister is to lay before Parliament the annual report of the Board as to the transactions carried out under the Act.

Municipal Endowment Reduction (No. 1920).—An Act for further reduction for one year of the Government endowment to muncipalities, to £50,000, is part of a system introduced some years ago owing to the exigencies of national finance and now maintained as a means of gradually throwing the municipalities more and more upon their own resources. The present policy is to restrict the grant to those shires which are really necessitous—where population is small, land poor, and country heavy.

Coal and Firewood (No. 1932).—This Act contains a number of provisions designed to prevent short-weight sales of coal and firewood, and enables the councils of municipalities to make by-laws further regulating the matter.

Railways Standing Committee (No. 1899).—This Act amends the constitution of the Standing Committee to which, as a means of checking political influence, all projects for railway construction are required to be submitted. The Committee consists of six members, of whom two are members of and appointed by the Legislative Council, and four members of and appointed by the Legislative Assembly. They continue members of the Committee during the session for which they are appointed, and an amount not exceeding £800 is appropriated for their remuneration. Two provisions of the new Act are significant—(1) that no appointment of members to serve on such Committee shall be by ballot; (2) no responsible Minister of the Crown shall be a member of the Committee.

The Railways Act (No. 1946) contains no provisions of general interest, except one for carrying the proceeds of various sales of property to the "Railway Loans Repayment Fund."

Surplus Revenue (No. 1904).—This Act (*a*) sanctions an advance of £294,000 from the Trust Funds Account to cover the deficiency in the

Consolidated Fund for the year 1901-2; and (*b*) notwithstanding anything contained in the Trust Funds Act, 1897 (an Act, which requires any excess of receipts over expenditure to be devoted towards liquidating the debt of the Consolidated Revenue to the Trust Funds), appropriates any surplus of receipts over expenditure for the year 1903-4 as follows: £150,000 towards the repayment of an advance of £478,000 made to the Treasurer by the Commissioners of Savings Banks; £390,000 towards the public works described in the schedule; and any further excess is to be paid into a fund to be dealt with as Parliament may direct. This further excess, amounting to £61,000, is dealt with by Act No. 1945.

University of Melbourne (No. 1926).—This Act provides, in addition to the permanent endowment of £9,000 per annum appropriated on the foundation of the University in 1856, an additional endowment of £11,000 per annum for ten years. Hitherto, the permanent endowment has been supplemented by annual grants of varying amounts; and this system has with the progressive reductions of the last twelve years seriously fettered the working and embarrassed the finances of the University. The change, though not all that was hoped for, is a change for the better, in that it at any rate enables the University to see some years ahead. Parliament on its part has a natural disinclination to part with the control which an annual appropriation gives it. The new endowment is attended with conditions designed to overcome this objection and framed by agreement of the University authorities with the Premier (Mr. Bent), and this agreement is embodied in the Act. The Government will nominate three members of the University Council—the managing body of the University—and of these, two must be members of the Legislative Assembly and one of the Legislative Council, whose position becomes vacant if they cease to be members of Parliament. The University undertakes to provide scientific and laboratory training in mining and agriculture; to co-operate with agricultural colleges and schools of mines, and to recognise the work done there as far as practicable; and to admit students to these courses without their having passed in the full number of subjects necessary for matriculation. To assist primary school scholars to proceed in mining and agriculture, the University will take without fee at least eighty students for a four-years' course—twenty in each year—to be nominated by the Education Department. An additional grant of £1,000 is made towards evening lectures in mining, agriculture, and education. The main feature of the scheme, it will be seen, is one for connecting the University with the primary industries of the country, and checking the tendency of the educated classes to crowd the professions.

Statistics (No. 1905).—Under this Act the following persons are required under penalty to furnish such information as the Government Statist may require for the purposes of his duties: officers of the public and municipal service, and of every corporation, trust, institution, board,

commission, or company, as to any matters of public concern and interest connected therewith; occupiers of land, as to area, stock, crops, etc.; occupiers of factories, mines, or other establishments of productive industry or of storage, particulars in relation thereto. For the purpose of making observations or enquiries, persons authorised by the Government Statist may in the daytime and within reasonable hours enter upon any land, etc. Improper disclosure of information by statistical officers is made an offence. The Government may upon the refusal of any public body to furnish information to the Government Statist withhold from that body any sum of money which would have been payable to it by way of grant.

Juries (No. 1907).—This is a very short Act, and it gives power to a judge, when it is proved before him on oath or by affidavit that a juror ought to be excused from attendance "by reason of any matter of special urgency or importance," to discharge the juror altogether, or for a limited period during the sittings of the Court. It relieves the judge from the compulsion previously upon him of fining the juror for his non-attendance even in such cases of necessity. The Act also adds to an already long list of persons exempted from liability to serve as jurors "justices of the peace if and whenever they so desire," but it requires such justices to first notify the Revision Court to omit their names from the jurors' lists.

Justices (No. 1959).—This Act makes for reform in both the criminal and civil jurisdiction of justices of the peace. On the criminal side its object is to save expense to the State and inconvenience and trouble to witnesses, by enabling a plea of "guilty" by persons accused of indictable offences to be received by the committing magistrates (a plea not previously receivable in such cases), and the witnesses thereupon are to be relieved in such cases from an unnecessary attendance at the Court of Gaol Delivery. Unless actually required to attend, the witnesses are not further troubled in the matter, but the Act (in ss. 2-4) allows the accused person upon his trial to withdraw the plea of "guilty" that he made to the committing magistrates, and to plead "not guilty" on his arraignment, if he so pleases, and in such latter case the witnesses are notified that they will be required. Formerly, even when it was known that a prisoner meant to plead "guilty" on his arraignment, it was nevertheless necessary to have all the witnesses present at the Court of Gaol Delivery, and in some cases witnesses in Victoria had to travel great distances, involving the State in unnecessary expense and the witnesses in unnecessary trouble. With the same object in view, the saving of expense, provision is further made for the case of an accused person who pleaded "not guilty" before the committing magistrates, but who, between the time of his committal for trial and the day of trial, has made up his mind to plead "guilty" on arraignment. In such a case the accused may notify to a magistrate or to the keeper of the gaol his intention to plead "guilty," and thereupon the witnesses previously bound in recognisances to

attend are to be notified that they need not attend unless they get a further notice (s. 9).

The Act allows the accused to be bailed, notwithstanding the plea of "guilty" before the committing magistrates, in all cases except in capital cases and in charges of treason (s. 12). The criminal jurisdiction of the Courts of General Sessions of the Peace is also dealt with by this Act (s. 18). In and for every one of the six bailiwicks in Victoria there exists a Court of General Sessions of the Peace constituted by a chairman (who is a County Court judge) sitting with or without the justices of the peace in that bailiwick. This Court of General Sessions is the analogue of the Court of Quarter Sessions of the Peace in England; and it stands in the same relation to the Supreme Court of Victoria that Quarter Sessions does to the King's Bench in England, and it has co-ordinate criminal jurisdiction with the Supreme Court to hear, determine, and adjudge all indictable offences, except those exclusively reserved for the Supreme Court. The desire to add jurisdiction to try cases of manslaughter, abortion, etc., in Courts of General Sessions has necessitated the re-defining of the criminal jurisdictions of both Courts, and so in s. 18 of this Act there is found a list of eleven indictable officers exclusively triable in the Supreme Court, and excepting only these eleven cases the criminal jurisdiction of both Courts is co-ordinate. The cases excluded from the jurisdiction of General Sessions are:

(i) Treason and suspicion of treason.
(ii) Felonies punishable with death.
(iii) Attempts to murder.
(iv) Unnatural offences.
(v) Offences against the King's title, prerogative, person, or Government, or against either House of Parliament.
(vi) Bigamy and offences against the laws relating to marriage.
(vii) Abduction or defilement of women or girls.
(viii) Composing, printing, or publishing blasphemous, seditious, or defamatory libels.
(ix) Unlawful combinations and conspiracies, except conspiracies or combinations to commit any offence which Courts of General Sessions have jurisdiction to try when committed by one person.
(x) Offences which by any Act cannot be prosecuted or tried at any Court of General Sessions.
(xi) Unlawfully and maliciously setting fire to any property under such circumstances as make such act a capital offence.

The Act also effects reform in the civil jurisdiction of justices, in connection with Courts of Petty Session, by adding to the already extensive and varied jurisdiction conferred on such Courts jurisdiction to hear cases arising on balance of accounts, and on accounts stated, and also claims for income tax (s. 14), and by creating for the first time for such Courts the default summons and procedure already existing in the County Courts,

but limiting it to claims not exceeding £50. For liquidated sums not exceeding £50 a plaintiff may now issue in a Court of Petty Sessions a special or default summons notifying the defendant that he must within a time named, and in a form supplied for the purpose with the summons served on him, notify his intention to defend the claim, or the plaintiff may sign judgment without attending in Court to prove his claim. This notice of intention to defend must be served both on the plaintiff and on the clerk of the Court, and even where it has not been served power is given to set aside on terms the order or judgment got by the plaintiff for default, and to give the defendant leave to defend the claim (s. 17).

Licensing (No. 1929).—In Victoria a licence to sell liquor is an annual licence and by the State law the licensee is required to apply at the annual sittings of the Licensing Court in December for a renewal. In 1894 an Act provided that if he had neglected to apply for the renewal on the first day of such annual sittings but applied later, the Court might adjourn such annual sittings for the purpose only of dealing with applications made for renewals. This power worked well in all cases where the Licensing Court lasted more than one day, as would be the case where the Court sat in large centres, but if, as happened frequently in small country towns, the sittings lasted but one day, the Court could not be adjourned, and if a licensee had not applied in time his chance of a renewal was gone and the licence ended. The new Act meets this difficulty, and it enables the Governor in Council, if the Licensing Court closed its sittings on the first day, to authorise a special sitting of the Court to be held in the months of January or February to deal with applications for renewals where the licensees had failed or neglected to apply at the annual sittings, and it also enables the owner or mortgagee of licensed premises to apply for the renewal at this special sitting in case the licensee himself fails to do so. The cost of the special sitting of the Court has to be borne by the applicant, and its payment is a condition precedent to the holding of the sitting (s. 4).

The provision in the English Act—3 Ed. VII. c.. 25, s. 59—prohibiting the sale of liquor to childen for consumption by any other person on or off the premises is adopted with but one alteration, viz. the age of the child is in this Act raised to sixteen years of age, whereas in England the prohibited age is under fourteen years of age.

It is remarkable that s. 3 of this Act should deal with the case of one person only and yet appear in a public Act. The section deals with what should have been the subject-matter of a private Act, for it is to enable the owner of a specific hotel, the licence to which was lost by default in applying for renewal, to apply at a special sitting of the Licensing Court to be constituted especially to deal with his case only. It seems a remarkable departure from the ordinary practice as to public Acts. The usual practice in Victoria is to make such a matter the object of a private Act

when a Committee of Parliament has made enquiry into the circumstances and reported favourably upon it.

Inebriates (No. 1940).—Virtually this Act enables inebriates (defined as "persons who habitually use alcoholic liquors or intoxicating or narcotic drugs to excess") to be treated as insane. On application and satisfactory proof, a judge, or master in lunacy, or a police magistrate may order—

(*a*) That the inebriate be placed for twenty-eight days under the care of some named person in the inebriate's own house, or in that of a friend, or in a public or private hospital, or in an "institution"—*i.e.* a place licensed under the Act or established by the Government for the reception, treatment, and control of inebriates; or

(*b*) that the inebriate be placed in an institution for any period not exceeding twelve months; or

(*c*) that the inebriate be placed for any period not exceeding twelve months under the care of a named attendant or attendants to be under the control of the judge, etc., making the order.

Persons who may make the application on which an order may be founded are—

(*a*) the inebriate or any person authorised by him when sober and fully understanding the nature and effect of such authorisation, of which the authority making the order must be satisfied; or

(*b*) the husband, wife, parent, brother, sister, son, or daughter of full age, or partner in business; or

(*c*) a member of the police force of or above the rank of sub-inspector acting on the request in writing of a medical man in attendance on the inebriate, or on the request in writing of a relative of the inebriate, or at the instance of a justice of the peace.

No order shall be made under the Act except on the production of a medical certificate, with corroborative evidence, and after personal inspection of the inebriate. Medical certificates shall include a statement of the facts on which they are based, and no person may be committed to any institution in which the certifying practitioner or his father, brother, son, partner, or assistant is interested either as keeper or as medical attendant.

When an inebriate has thrice within twelve months been convicted of an offence of which drunkenness is a necessary part or condition, a Court of Petty Sessions (consisting of a police magistrate) may order that the inebriate be placed in an institution for twelve months, and on the order of a judge or the master in lunacy, the period of detention may be extended from time to time for periods not exceeding twelve months each. The

authority making the order may order that the cost of detention and treatment should be paid out of the inebriate's property; and the Supreme Court or any judge thereof, on proof that any inebriate the subject of an order under the Act is incapable of managing his affairs, may make such orders as may be made in the case of a lunatic under the Lunacy Acts (presumably this power lasts only during the continuance of the order). There are various subsidiary provisions, *e.g.* prohibiting the supply of intoxicants to the inebriate, prohibiting his departure from the State, providing for his arrest in case of escape, providing for the inspection of institutions under the Act, etc. The Governor in Council may establish institutions for the care of inebriates, and provide for the control and management thereof.

Stamps (No. 1902).—This is really a machinery Act and not one imposing new taxes or duty. It provides in s. 2 new machinery for the sale of duty stamps. The reason for such new machinery is that before the Commonwealth was established the post offices in Victoria came under the control of the State Government, and all postmasters were under a legal duty to sell duty stamps to the public, and that after the establishment of the Commonwealth, which took over the control of the State post offices, and after the passing of the Federal Post Office Act, the Commonwealth declined to allow its officers to sell these duty stamps unless some percentage and commission for their sale could be arranged for with the State. So far the matter has not yet been arranged, but by s. 2 of this Act the Victorian Minister or Comptroller of Stamps is authorised to appoint officers of the State public service—railways, police, etc.—to sell these stamps to the public without being licensed. The section provides too for the time when the Commonwealth of the State shall have made mutual satisfactory arrangements by empowering the Minister to appoint in the future Commonwealth officers to perform the like service, which will mean a sale by postmasters as heretofore.

S. 3 of the Act repeals a now useless provision in the State Stamp Act of 1890. Before the Commonwealth took over the control of the State post office, the Stamp Act provided that when documents were sent to the Minister in envelopes through the post office for stamping, and the envelopes were properly marked, they were to be carried free of charge by the post office; now the Commonwealth refuses to carry any such documents free of charge, and as the section in the principal Act is now nugatory, it is repealed by s. 3 of the above Act.

Again, under the principal Act, transfers, conveyances, and other such documents must be stamped on execution, and are subject to a penalty for later stamping, and when once the penalty is incurred application is necessary to the Minister to remit it, and these applications have been found very numerous in the past. At least four hundred of such applications are made monthly to the Minister, and nearly always successfully. To avoid the amount of clerical labour necessitated in such a state of the law, the Act

has adopted (in s. 4) the English law, 54 & 55 Vict. c. 39, s. 15, allowing in the case of *ad valorem* duties the stamps to be put on, as a matter of course, at any time within one month of the execution of the document without any penalty.

The Act also alters (in s. 5) a provision in the existing law under which the Collector of Stamps must give receipts for certain duties that are payable to him by allowing him to impress upon the instrument itself the requisite stamp, and so rendering unnecessary any further receipt by him.

Instruments (No. 1925).—This very short but important Act was passed to destroy in the State of Victoria the effect of the judgment in England in the Gordon cheque cases (*Gordon* v. *London C. & M. Bank* [1902], 1 K.B. 242; SS. [1903] A.C. 240, and *Same* v. *Capital and Counties Bank*, ib.).

The State of Victoria adopted the English Bills of Exchange Act of 1882 (45 & 46 Vict. c. 61) in the year 1883, and has now amended it by the above Act, which adopts for Victoria the bill that was recently before the House of Lords and which passed its third reading then. It will be remembered that the principal Act (s. 61) gives protection to a banker paying a cheque to order on a forged endorsement; and that in the Gordon cases it was held that a draft drawn by a branch bank on its head office did not get the protection of this section, even though a draft drawn by a bank on another bank did get it; and so s. 2 of the above Act enacts that for the purpose of s. 61 of the principal Act a banker who carries on business at more than one place shall be deemed a separate and independent banker at each of those places.

Again, in the Gordon cheque cases the view was confirmed that the crediting of a cheque as cash before clearance deprived the banker of the protection given by s. 82 of the principal Act to collecting bankers receiving payment for a customer; and so s. 3 of the above Act now enacts in defeasance of this view that "the banker is not to lose the benefit of the said section by reason only of the fact that before receiving payment for a customer of a cheque crossed generally or specially to such banker, he has credited the account of the customer with the amount of such cheque."

6. SOUTH AUSTRALIA.[1]

[*Contributed by* A. Buchanan, Esq.]

Acts passed—General, 126; Private, 3.

Constitution.—*Disqualification for State Parliament.*—Act No. 790 of 1902 removes the disability for nomination or election as a member of the State Parliament imposed by Act No. 731 of 1899 upon members of the

[1] The legislation of the years 1902 to 1905 inclusive is here reviewed. The summary of the legislation of 1901 appeared in this Journal, No. 2 of 1902, p. 271.

Commonwealth Parliament (s. 1), but enacts that no member of the Commonwealth Parliament shall be a member of the State Parliament.

Federal Senators.—Act No. 834 of 1903 enables the Governor of the State to fix by proclamation in respect of any election of senators for the State of South Australia the places at which the election shall be held and the dates of nomination of polling and for the declaration of the poll.

Electoral.—Act 876 of 1904 provides that every person not under twenty-one years of age, whether male or female, married or unmarried, who has lived in South Australia for six months continuously, is a natural-born or naturalised subject of the King, and whose name is on the electoral roll of any House of Assembly district, shall be entitled to one vote for the election of members of the House of Assembly (s. 4 [1]), unless of unsound mind or attainted of treason or convicted and sentenced, or subject to be sentenced, for one year or more for an offence in any part of the King's dominions (s. 4 [2]). The returning officer for any House of Assembly district may direct any names in the corresponding Commonwealth Roll which do not appear on the State Roll to be added to the State Roll (s. 5), and to prevent undue delay electoral information or matter may be communicated by telegraph.

Public Debt.—*Consolidated Stock and Sinking Fund.*—Act No. 836 of 1903 provides that future issues of stock under the principal Act of 1896 shall be repayable at par on March 1, 1933, but gives to the Treasurer the option of redeeming on or after March 1, 1923, upon twelve months' notice.

Redemption of Public Securities.—Act No. 896 of 1905 authorises the Treasurer, for the purposes of redeeming bonds and Treasury bills amounting to £7,772,200, falling due between January 1, 1907, and October 1, 1910, to sell inscribed stock with a currency of not less than fifteen or more than thirty years, or Treasury bills with a currency of not more than seven years, such stock or bills to carry interest not exceeding £4 per cent. per annum.

Adelaide Sewers Sinking Fund.—Act No. 783 of 1902 provides that the sinking fund established under the Adelaide Sewers Act shall be paid over to the Public Debt Commissioners for the reduction of the Public Debt (s. 7), and for an annnal payment out of sewers rates to the Commissioners in lieu of the sinking fund after payment of expenses and interest on sewers loans (s. 4), and for Government lands and premises to be rated (ss. 9, 10).

Taxation.—*Land and Income.*—Act No. 782 of 1902 provides that the next assessment of land liable to land tax shall be postponed for two years (s. 2), and therefrom shall be quinquennial instead of triennial (s. 3), that notice to the taxpayer shall not be necessary unless some alteration directly affects him (s. 4), but his right of appeal against the unaltered assessment is saved (s. 5), and also in respect of the present assessment for the extended

term (s. 6). That except in cases of default or fraud taxpayers are not to be required to give account of income for more than three years back (s. 7), and that an owner of land unencumbered except for land tax arrears may surrender such land to the Crown, which land shall thereupon be deemed Crown land.

Income.—Act No. 861 of 1904 renders income derived from shipping taxable (s. 12), alters the mode of ascertaining the taxable amount of income of companies (s. 17), and allows a deduction from the taxpayer's income in respect of the services of children over sixteen years of age (s. 24).

—— Act No. 894 of 1905 reduces the amount of income exempt from income tax from £200 to £150 (s. 2), and abolishes exemption if income exceeds £400 (s. 4) or if the taxpayer had been out of the State for twelve consecutive months at the time of the passing of the Act (s. 5). Income derived from land of less than £1,000 unimproved value and produced by personal exertion is exempted from income tax (s. 10).

Stamps.—Act No. 789 of 1902 makes further provisions for stamp duties and (*inter alia*) requires every company or person carrying on insurance business to be licensed annually and pay yearly a licence duty of £25. A stamp duty of 2½ per cent. is imposed upon the gross takings of every totalisator.

Public Service.—*Superannuation.*—Act No. 792 of 1902 established a fund to be built up by deductions from the pay of public servants (s. 12) to provide annuities to contributors upon retirement after reaching a prescribed age, or in the event of earlier incapacity by reason of ill-health or infirmity, and annuities to the widows and orphan children of male contributors. Provision is to be made for payments to contributors who withdraw from the public service before becoming entitled to annuities (s. 14). Contribution is optional with persons in the public service at the time of the passing of the Act, but compulsory in the case of subsequent entrants, except as regards public school teachers and police, as having funds already, and railway employés, as being already under a statutory obligation to insure their lives (s. 15). Contributions are to be deducted by the Treasurer from the pay of the contributors and paid over month by month to the Board (s. 18). The fund is to be administered by a Board of seven, of whom one is an official member, two are appointed by the Government, and four are elected by the contributors. Provision is made for an annual audit (s. 25) and for quinquennial actuarial investigations, and after every such investigation the rates of contribution and scales of benefits are to be reviewed and altered if necessary, to ensure actuarial soundness and the fullest benefits to contributors consistent with such soundness (s. 27).

Railway Superannuation.—Act No. 840 of 1903 gives to railway employés the option of subscribing to the Public Service Superannuation Fund established under Act No. 792 of 1902 in place of the life insurance made compulsory by the South Australian Railways Commissioners Act of 1887.

Officers' Retirement.—Act No. 827 of 1903 provides that all persons in the employ of the Government of South Australia—except the judges of the Supreme Court, the Commissioner of Insolvency, and the clerks of the Legislative Council and the House of Assembly (s. 2)—shall retire upon attaining the age of seventy years, but that the Governor may direct any competent and willing officer to remain in the service after attaining seventy for not more than twelve months at one time (s. 3).

Railways Service Appeal Board.—Act No. 829 of 1903 gives to any railway employé who has been cautioned, suspended, fined, or reduced in position or pay by the officer at the head of his branch of the railway service an appeal to the Board of Appeal constituted by this Act or to the Commissioner of Railways, as the case requires (s. 7). Against fines, the appeal lies in the first instance to the Commissioner of Railways (s. 8), and from him to the Board, which has power to inflict costs upon an unsuccessful appellant (s. 9). The Board of Appeal is constituted (s. 11) of five members as follows: the Engineer-in-Chief, the Chief Mechanical Engineer, the General Traffic Manager, the Secretary to the Railways Commissioner, and one person elected by and from the employés (s. 12), the elected member to retire at the end of six years (s. 14). A Secretary to the Board is to be appointed by the Governor (s. 13). Every appeal to the Board is to be lodged with the Secretary within fourteen days of the decision appealed from and is to be heard within thirty days of being lodged (s. 19). The chairman has power to administer oaths, and if the appellant so requires evidence shall be on oath (s. 22). The decision of three members shall be the decision of the Board (s. 23), and every decision of the Board shall be final and shall be given effect to by the Commissioner of Railways (s. 24). All books, papers, and documents having reference to an appeal are to be produced to the Board when required (s. 25). Regulations may be made by the Governor for the conduct of elections and the attendance of elected persons at the sittings of the Board, the conduct of appeals and of departmental enquiries, and generally for effectually carrying out the provisions of the Act (s. 26).

Leave of Absence.—Act No. 900 of 1905 provides that persons who enter the public service after the passing of the Act shall be entitled to one-half only of such leave of absence as might heretofore have been granted under the Civil Service Acts of 1881 and 1894 (s. 2), and the provisions of the Act of 1894 relating to long leave are retrospectively extended to all those Government employés who did not originally before come within it.

Railways and Tramways.—*Transcontinental Railway.*—Act No. 803 of 1902 authorises the Governor to call for tenders (Part III.) and contract for the construction of a railway to bridge the gap between the existing railways in South Australia and the Northern Territory (Part II.) upon the land-grant system (Part VI.).

Pinnaroo Railway.—Act No. 831 of 1903 authorises the construction of a railway from Tailem Bend to Pinnaroo (s. 2) after not less than

100,000 acres of certain specified land shall have been sold (s. 3), provides that the specified lands may be sold at prices fixed by the Land Board, payable with 2 per cent. interest by sixty equal half-yearly payments (s. 8), and the purchase-moneys paid for the land are to be paid to the credit of the Loan Fund, and the interest received is, until Parliament otherwise provides, to be applied towards the payment of interest on the cost of the railway (s. 12). In sub-dividing the lands the Surveyor-General is to reserve belts to be perpetually preserved as breakwinds (s. 13).

Tramways Electric Traction.—Act No. 865 of 1904 is a complicated measure to empower the Government to purchase the existing horse tramways of Adelaide conditionally upon securing a concessionaire willing and able to convert them into a system operated by electricity.

Murray River.—*Barrage.*—Act No. 873 of 1904 authorises the construction of a barrage near the mouth of the River Murray to prevent the influx of salt water and to secure the navigability of the river (Part I.), and contains provision for the rating of lands to be benefited by the works (Part II., III., and IV.).

Locks.—Act No. 902 of 1905 authorises the construction of weirs, dams, locks, and other works for navigation and irrigation on the River Murray. Part II. contains the powers to construct works. Part III. provides for the control and use of the water, and authorises the imposition of tolls and charges in respect of navigation and irrigation; and other parts contain the necessary machinery provisions.

Land Legislation.—*Crown Lands.*—Act No. 830 of 1903 is an elaborate measure divided into eighteen parts and containing 252 sections consolidating, and in minor particulars amending, the law relating to the alienation by selling or leasing of Crown lands other than pastoral lands. Part III. deals with the powers of the Commissioner of Crown Lands to arrange for the offering for sale and sale of Crown lands (s. 11, I. to IV.), to receive purchase-money or rent after due date (11, V.) to remit conditions where compliance is impossible, or would inflict hardship (11, VI.), to extend time for performance of conditions (11, VII.), to levy and recover amounts due, and to distrain (11, VIII.), to enter leased lands to search for and do all acts to conserve water (11, IX.), to authorise charges for water so found or conserved (11, X.), to reclaim swamp lands (11, XI.) and to lease same (11, XII.), to forcibly eject persons in unauthorised possession of Crown lands (11, XIII.), to appoint rangers (11, XVIII.).

Part IV. constitutes a Land Board of four civil servants (s. 12), of whom three form a quorum (s. 16), to decide (except in cases of town lands) the area to be held by any one person (s. 21, I.), and the price or rent (21, II.), consider applications for land (21, III.), if necessary examine applicants, objectors, and witnesses (21, IV.) under oath (s. 24), in prescribed form (s. 26), or affirmation (s. 27).

Part V. specifies the lands which may be offered on lease or under agreement (Div. I.), provides for the classification of lands and applications (Div. II.), provides for perpetual leases (Div. III.) at a rent subject to re-valuation every fourteen years (s. 42), sets out the requirements of agreements under this part of the Act (Div. IV.), provides for the re-valuation of rent on renewal of leases with right of purchase (Div. V.), sets forth the provisions applicable to leases and agreements (Div. VI.).

Provisions are made in Part VII. for miscellaneous leases for grazing and cultivation (ss. 75, 76), guano and other deposits (s. 77), the resumption of wells and watering-places upon payment of compensation (s. 79), and the leasing of lands so resumed for water (s. 80). Leases may be granted for sites for business purposes in thirty populated districts (s. 80, III.) or for other purposes (s. 80). Leases under this part may be granted of educational lands (ss. 82, 83), and of forest reserves (ss. 84-6).

Part VIII. confirms and continues the constitution of certain village settlements or associations (s. 87), provides that the lands set apart to form the district of the association shall so far as consisting of horticultural lands be sub-divided into ten-acre blocks, and so far as consisting of commonage land into blocks (s. 90). Valuations are to be made of the irrigation works in each district, the improvements and the personal estate of each association (s. 93), and the total valuation shall be deemed the total indebtedness of the association to the Government, and any excess of indebtedness shall be written off (s. 97). The amount so written off and also the total indebtedness of any association closed is to be provided by the Treasurer on the Estimates by equal instalments during the next succeeding seven years (s. 98). Leases of the blocks may be granted to individuals charged with amount of the valuation as a debt payable with interest at $4\frac{1}{2}$ per cent. in forty-two equal annual instalments (Div. III.). The irrigation works in any district are to remain the property of the Commissioner until the charges are satisfied (s. 106), but the water is to be the property of and used by the association (s. 107), which is, subject to the direction of the Commissioner, to control the works (s. 108, I.), keep them in repair (s. 108, II.), the irrigation expenses being borne by the members of the association equally (s. 108, III.). The affairs of the association are to be managed by a board (s. 109), subject to the power of the Commissioner to expel any member of the association (s. 110, I.), to control and direct the expenditure (s. 110, II.), to require any trustee to retire (s. 110, III.), to require an association to increase its members (s. 110, IV.), and to make rules for its management (s. 110, V.). The commonage lands are to be worked for the common good and benefit of the members and may be sub-let by the association (s. 116, I.). Members of the association are to contribute labour towards the maintenance and working of the irrigation works and the care and cultivation of commonage lands (s. 116, II.). Accounts of the working of the commonage lands are to be prepared

annually, and after providing for proper outgoings and a sinking fund to cover depreciation and renewal, the surplus is to be divided amongst members in proportion to their credits in the books of the association (s. 117). All disputes of a civil nature between members are to be settled by arbitration (s. 118).

Part IX. contains the provisions relating to homestead blocks which may be held under perpetual lease or agreement under Part V. of the Act (s. 123), but the value of the unimproved fee simple must not exceed £100 (s. 124), and the lessee or purchaser (or some member of his family —s. 133) must personally reside on the land for nine months in every year (s. 125). The Commissioner may at the request of the holder, after notice in the Government *Gazette*, endorse the lease or agreement "Protected Homestead Block" (s. 129), whereupon no subsequent encumbrance by the blockholder, except a loan agreement under Division VI. of this part of the Act, shall have any validity, nor shall the block be liable to execution for debt or pass to a trustee in insolvency or become, on the death of the holder, assets for the payment of debts, unless expressly so provided by his will, but the endorsement may be cancelled and the protection removed at the request of the blockholder (s. 130). Cultivation in vines or fruit trees for seven years shall entitle to certain reductions in rent or purchase-money (s. 131). Either husband or wife may hold a homestead block, but not both at one time (s. 132). A block may be assigned or sub-let when the Commissioner is satisfied the holder is unable to continue in occupation (s. 134), and a lessee having complied with the provisions of his lease and repaid all loans may surrender his lease and obtain an agreement or perpetual lease (s. 135). Blockholders may obtain from the Treasurer an advance (s. 139) not exceeding one-half the value of his improvements and not exceeding £50 at any one time (s. 141) out of the "Blockholders' Loan Fund," constituted under the Act out of moneys to be provided by Parliament (s. 136), upon entering into a loan agreement in the prescribed form (s. 143) for repayment with 4 per cent. interest by twenty equal annual instalments (s. 144).

Part X. deals with closer settlement, for which purpose the Commissioner is empowered to repurchase land at a cost not exceeding £300,000 in any two years upon the recommendation and valuation of the Land Board and Surveyor-General (s. 151). Lands so repurchased shall, except what is required for town lands or public purposes, be cut up into blocks not exceeding £2,000 unimproved value (s. 152, II.), or in cases where the value of the improvements is disproportionate, into blocks not exceeding £3,000 unimproved value, or if the land is suitable only for pastoral purposes, into blocks not exceeding £4,000 unimproved value (s. 152, III.). Notice is to be given in the Government *Gazette* when blocks are open for purchase, with full particulars (s. 152, VII.) of values fixed by the Board (s. 152, VI.), and the blocks shall be allotted by the Board (s. 152, VII.)

to purchasers who enter into agreements to pay the purchase-money with not less than 4 per cent. interest by sixty equal half-yearly instalments (but with the right to complete after six years) (s. 153, I.), and to expend in substantial improvements during each of the first five years a sum equal to £3 per cent. of the purchase-money, but with a right to have reckoned in this account so much of his purchase-money as was for improvements (s. 153, III.). If allotted on personal residence, the agreement is to contain a provision for the purchaser to reside on the land for nine months in each year (s. 155). No block shall be allotted to any person except under s. 156, III. who is or would thereby become the holder of land of more than £2,000 unimproved value (s. 157), nor is the transfer of any agreement to be permitted to any such person (s. 158). Repurchased lands remaining unallotted for a year may be let on miscellaneous lease or may be sold at auction on terms one-fourth cash and the balance payable by five yearly instalments with interest at 4 per cent. (s. 159). Moneys received by the Commissioner in respect of repurchased lands for interest or rent shall be paid into general revenue (s. 162, II.), and moneys repaid on account of principal shall be paid to the credit of the Land Repurchase Loan Fund and shall be used for the redemption of stock or for the purchase of land under this Act (s. 162, I.). A statement is to be prepared each year by the Surveyor-General and laid before Parliament showing the amount advanced from the Loan Fund and the amount of interest thereon, the amount received for principal and interest from purchasers, and the amount in arrear (s. 163). The Governor is to appoint an officer of the Crown Lands Department as Receiver of Rents (s. 164), who is to have power to enforce payment (s. 165), extend time for payment (s. 166). Failure to pay within six months after demand by the Receiver is to render an agreement liable to forfeiture (s. 167), which may be cancelled by *Gazette* notice and the land re-offered *de novo* (s. 168).

Part XI. contains the provisions relating to surrenders. Any lessee may surrender his lease, but the surrender shall not take effect until accepted by the Governor (s. 170). Approved transfers may be effected by surrender and grant of new leases for the unexpired term (s. 171). Leases used only for pastoral or agricultural purposes or both, and not required for subdivision or public purposes, may be surrendered for a perpetual lease or agreement under Part V. of the Act (s. 174) at a rent or purchase-money to be fixed by the Land Board (s. 175), subject to appeal to the Commissioner (s. 183), provided the unimproved value of the land and of all other lands held by the lessee or purchaser under any tenure shall not altogether exceed £5,000, unless the land included in such perpetual lease or agreement is suitable for pastoral purposes only, and the total carrying capacity must not exceed 5,000 sheep within Goyder's Rainfall Line or 10,000 without it (s. 187).

Part XII. deals with transfers, which may be approved by the Com-

missioner on the recommendation of the Board, but no transfer or sub-letting shall be permitted in favour of any person who would then hold under any tenure lands (other than town, suburban, pastoral, or repurchased lands) of which the unimproved value of the fee simple shall exceed £5,000, or of pastoral lands (other than lands held under pastoral lease) exceeding a carrying capacity of 5,000 sheep within Goyder's Rainfall Line or 10,000 sheep beyond it.

Part XIII. contains the provisions for the sales and exchange of lands and sites for buildings. Special blocks, Crown lands within hundreds offered for lease under Part V. and not taken up within two years, town and suburban lands may be sold at auction for cash (s. 190), and the purchase-moneys of lands so sold shall form a fund primarily applicable to the payment of such portion of the public liabilities as shall be specially charged thereon (s. 195). Fraudulent agreements to prevent fair competition at auction sales are declared illegal and void (s. 196), and any agreement to pay more than $2\frac{1}{2}$ per cent. commission to an agent to purchase is made absolutely illegal and void (s. 197). Crown lands, or lands set apart, dedicated or reserved, or held under lease or agreement may be exchanged for other lands (s. 198), and the lands received in exchange shall be set aside, dedicated, or reserved for the like purposes (s. 200), or may be sold or let to the holder of the lease or agreement on the terms of the original lease or agreement (s. 199). Sites of not exceeding two acres may be granted for schools, churches, institutes, or hospitals (s. 201, I.), and sites not exceeding one acre, and not within five miles of town lands, may be granted for shops, stores, or other approved purposes (s. 201, II.) upon payment of the purchase-money, to be fixed by valuation if necessary.

Part XIV. empowers the Commissioner to grant licences to enter specified portions of Crown and leased lands (other than perpetual or right of purchase) to cut and take away timber, gravel, stone, etc. (s. 203, I.), and to enter and occupy specific portions of Crown lands, dedicated or reserved lands, or pastoral leased lands for fishermen's residences, manufactories, or other purposes, and except pastoral lands for depasturing (s. 203, II.).

Part XV. gives powers to the Governor to make regulations to give effect to the Act (s. 206), which regulations shall be published in the Government *Gazette* and laid before Parliament (s. 207, I.), and have the force of law (s. 207, II.).

Part XVI. contains miscellaneous provisions for the control of Crown lands and to define the duties and powers of Crown (ss. 212, 214, 215) and District Council rangers (s. 213).

Part XVII. sets out penalties for offences against the Act, and Part XVIII. provides the legal procedure, etc. The Act does not apply to the Northern Territory.

Pastoral Lands.—Act No. 850 of 1904 consolidates the law relating to the pastoral lands of the Crown. It is an elaborate measure of 145

clauses. Part II. constitutes a Pastoral Board with powers to deal with pastoral lands. Part III. prescribes the mode of offering lands for lease. Part IV. relates to applications and leases and re-letting, Part V. to rents, valuations, and re-valuations, Part VI. to improvements, Part VII. to resumptions and surrenders, Part VIII. to occupation by outgoing and possession by incoming lessee, Part IX. to travelling stock, Part X. to water, Part XI. to vermin and wire netting, Part XII. to special leases to discoverers or for inferior land, and Part XIII. constitutes a Tenants' Relief Board, composed of a judge of the Supreme Court and two assessors, to which a tenant may apply for relief against forfeiture for any cause other than non-payment of rent.

Northern Territory Tropical Products.—Act No. 874 of 1904, to encourage the growth of cotton and other tropical products, enables the Governor to enter into an agreement with any intending grower to grant the use for fourteen years of not exceeding 5,000 acres on terms of cultivation of one-twenty-fifth to one-fifth of the area, and payment of 1½*d.* per acre rent during the second seven years, with a right of purchase during the term if certain terms of cultivation have been complied with.

Swamp Lands.—Act No. 899 of 1905 : Part I. empowers the Commissioner of Crown Lands to reclaim and let swamp lands. Part II. modifies the terms for payment of purchase-money of closer settlement lands, and Part III. extends to a carrying capacity of 10,000 sheep the maximum holding of a proposed transfer of a lease (other than a pastoral lease) of land suitable only for grazing, and gives relief in the shape of extended time for payment of the rent of such lands which may be in arrear.

Mining.—*Gold Dredging.*—Act No. 881 of 1905 enables the granting of leases for the purpose of gold dredging of mineral lands which have been worked for alluvial gold but are no longer capable of being profitably so worked, or of mineral lands too poor for profitable working as alluvial or reefing claims.

Northern Territory.—Act No. 839 of 1903 amends and consolidates the laws relating to mining for gold and minerals in the Northern Territory. It provides for the creation of mining districts and the proclamation of goldfields (Part II.), the issue of miners' rights (Part III.), and business and garden licences (Part IV.), specifies the provisions applicable to such rights and licences (Part V.), provides for the granting of gold-mining (Part VI.) and mineral leases (Part VII.), sets out the provisions applicable to such leases (Part VIII.), for the amalgamation of claims and leases (Part IX.), the forfeiture of leases (Part X.), the appointment and powers and duties of wardens (Part XI.), the encouragement of mining by pecuniary rewards to discoverers, subsidies to persons engaged in mining, or by the loan of boring or other machinery (Part XII.), and provisions for the inspection of mines (Part XIII.).

Education.—*Amendment.*—Act No. 892 of 1905 renders compulsory a

specified number, varying according to circumstances, of attendances at school week by week by children in country districts in lieu of previous provisions requiring attendance on thirty-five school-days in each school quarter.

Institutes.—Act No. 800 of 1902 makes provision for the amalgamation of institutes. Part I. prohibits mortgages by institutes except with the consent of the Minister controlling Education (Part II.) and empowers any institute with the consent of the Minister to transfer its property to the local authority for the purposes of a free library under the Free Libraries Act, 1898.

Married Woman's Property.—Act No. 796 of 1902 makes a married woman and her property liable under a judgment as if she were a *feme sole*, except that execution is not to issue against her property which is subject to a restraint upon anticipation (s. 2).

Legitimation of Children.—Act No. 793 of 1902 allows legitimation of children by registration, notwithstanding the expiry of the six months after marriage of parents limited under Act No. 703 of 1898, upon application to a special magistrate (s. 2).

Affiliation.—Act No. 819 of 1903 limits to nine months the time for which confinement expenses which have been levied in anticipation may be retained (s. 4), extends the power to issue a warrant for desertion to the case of the father of an unborn child (s. 6), and makes other small amendments in the prior legislation.

Apportionment.—Act No. 898 of 1905 makes annuities, salaries, pensions, dividends, rents, and periodic payment in the nature of rent apportionable as if the same accrued from day to day.

Administration and Probate.—Act No. 854 of 1904 adds to the cases in which the Court may make an order authorising the Public Trustee to administer the estate of a deceased person (s. 4), or money or property subject to the trusts of a will (s. 4), authorises the Public Trustee after payment of the South Australian debts and charges to pay over the balance of an estate in his hands to an executor, or administrator, or curator duly appointed by the Court of any other State of the Commonwealth or of New Zealand (s. 6), or to receive from the curator of any such other State the balance of a deceased's estate in that State (s. 7), and allows a banker after the death of an ordinary customer or depositor with a credit balance not exceeding £50 to pay such balance to the widow or widower if probate or letters of administration are not produced within three months of the death.

Marine.—Act No. 814 of 1902 extends the powers of the Marine Board to lease the foreshore (s. 6), and wharves and landing-places (s. 7), and issue licences for the use of wharves, etc. (s. 8), license and control pilots for Port Adelaide, who are to act solely for the Government and be paid by salary (ss. 14, 15). Pilotage exemption certificates are to be issued to

British subjects only (s. 20). Steamship certificates of survey may be extended (ss. 25, 26). In ships on time agreement trading in South Australia wages must be paid monthly or on arrival at home port (s. 32).

Traffic Regulation.—*Lights on Vehicles.*—Act No. 821 of 1903 extends the provisions of Act No. 16 of 1872 to bicycles, tricycles, and motor-cars (s. 2), and provides that the lamp on every such vehicle shall, at the times and places mentioned in the principal Act, be carried so that the light shall be visible from approaching vehicles (s. 3).

Motor Traffic.—Act No. 866 of 1904 gives power to the Governor to make regulations to limit the speed of motor vehicles and otherwise control their use.

Patents.—Act No. 785 of 1902 allows a patentee who has accidentally or inadvertently omitted to make a prescribed payment to apply for an extension of time for making such payment (s. 2), and on payment of £5 and the fees the time may be extended for not more than six months.

Juries.—Act No. 891 of 1905 empowers the Court on trials for felony other than murder to allow the jury before they consider their verdict to separate, as theretofore juries might be permitted to separate on trials for misdemeanour.

Police Prisons.—Act No. 884 of 1905 provides for the proclamation of Police Prisons, and enables Courts to direct that imprisonment for terms not exceeding one month be carried out in a Police Prison in lieu of a gaol.

Crime.—*Gaming.*—Act No. 812 of 1902, for the more effectual suppression of unlawful gaming, authorises the Registrar of Companies to refuse registration under the Companies Act, 1892, to any company if in his opinion it is designed directly or indirectly to contravene the Gaming Acts (s. 5), and gives power to a special magistrate to cancel the registration of a company which fails to satisfy him that its premises were not used for unlawful gaming (s. 9). The burden of proof is thrown upon the defendant when circumstances raise a reasonable suspicion that money or things have been given in contravention of the Gaming Acts (s. 4), or that cards, dice, balls, lists, or other articles have been used for unlawful gaming (s. 7). Extended powers are given to the police to forcibly enter and seize under warrants issued by special magistrates or the Commissioner of Police (s. 6).

Larceny and Previous Convictions.—Act No. 791 of 1902 adopts the Imperial Larceny Act, c. 1 of Ed. I. (*vide* Journal Comp. Leg. N.S. No. X. p. 218), which amended the law with regard to the fraudulent misappropriation of money (ss. 1, 2), and extends the provisions of ss. 379 and 380 of the Criminal Law Consolidation Act, No. 38 of 1876, relating to previous convictions for felony to convictions in any State of the Commonwealth (s. 3).

Trading Stamps.—Act No. 859 of 1904 prohibits the issue of trading stamps or coupons and the giving of money or goods for trading stamps

(s. 3), and renders a person on whose behalf an offence is committed equally liable with the actual offender (s. 4), but trading stamps may be issued if redeemable at the issuing establishment (s. 7).

Loitering.—By the Police Act Amendment Act, No. 870 of 1904, any person standing or loitering in any street, road, thoroughfare, or footpath after being requested by a constable to move on is guilty of an offence and liable on conviction to a penalty of 40*s.*

Tobacco.—By the Children's Protection Amendment Act, No. 875 of 1904, any person who shall sell, lend, or give, or offer to sell, lend, or give to any child actually or apparently under the age of sixteen years any tobacco, cigar, or cigarette is rendered liable to a penalty of £5.

Opium.—Act No. 890 of 1905 prohibits all traffic in opium except by wholesale druggists and registered chemists (s. 4), or as a medicine under the authority of a duly qualified medical practitioner, the penalty on a first conviction being a fine of not less than £5 or more than £20, and on a second conviction of not less than £10 nor more than £50, or three months' imprisonment, or both (s. 3), any Asiatic alien being subject to the additional penalty of deportation to his domicile of origin (s. 5). The manufacture of opium in any form suitable for smoking is made an offence punishable by fine of £10 to £50 (s. 6). Keeping a place for opium-smoking is also made an offence punishable on a first conviction by fine of £10 to £50 and on a second conviction by not exceeding twelve months' imprisonment (s. 7).

Local Government.—*Municipal Corporations.*—Act No. 833 of 1903 provides that service for one year as mayor, alderman, or councillor in some municipality in South Australia is necessary to make a candidate eligible for the position of mayor (s. 7), extends the powers of the corporation in respect of streets and buildings (ss. 8 to 12), defines the permanent works and undertakings (s. 14) for which corporations may borrow on debentures to an amount never to exceed three times the amount which would result from a shilling rate (s. 13, I.), repayable within forty-two years by a sinking fund (s. 13, II.), the annual contribution to which, together with the interest on the debentures, is not to exceed the amount of a threepenny rate (s. 13, III.), and makes the interest and half-yearly contribution to the sinking fund a first charge on the rates (s. 13, IV.); contains provisions for municipal abattoirs (s. 15), as to the reclamation of lands at the expense of adjacent owners (ss. 17 to 19), as to the destruction of noxious weeds on its roads and lands (s. 21), and on other lands at the expense of the owner or occupier after notice (s. 20), extends the power to make by-laws (ss. 23, 24), requires any corporation or local authority carrying on tramways, gas or electric light works, or other services to publish yearly statements of accounts and balance sheets, and to fix fares and rates annually, so that the revenue shall not be less than the expenditure (s. 25). Trees may be planted (s. 26) and statues or monuments

erected in or removed from the streets (s. 28). The moneys of the corporation may be expended for concerts, pension funds, honorariums for special services, retiring allowances to officers, monuments or statuary, or district trained nurses (s. 29), or public functions up to a specified limit (s. 30). Public companies, bodies corporate, and trustees holding ratable property are empowered to nominate not exceeding three persons to be enrolled on the citizens' or ratepayers' roll to exercise the rights of voters (s. 32). Part VI. prescribes penalties for damaging trees or guards (s. 34), for obstructing or depositing offensive matter on the streets (s. 36), or lingering or loitering whilst hawking goods for sale in the streets (s. 37).

Places of Public Entertainment.—Act No. 855 of 1904 provides that no such place shall be open to the public unless licensed by the mayor or corresponding local authority, who is not to grant a licence unless satisfied that reasonable provision is made against the risk of fire, to extinguish fires, and for sufficient means of egress in case of fire (s. 3); provides for the appointment of a Government inspector (s. 4), and provides that every application for an annual licence shall be laid before the local authority, to which a power of veto is given (s. 5).

Fire Brigades.—Act No. 860 of 1904 consolidates and amends prior legislation on the subject. Part I. constitutes and incorporates the Fire Brigades Board of six members (s. 6), of whom two are nominated by the Government, one by the Corporation of Adelaide, one by other local authorities, and two by contributory insurance companies (s. 9), in which is vested the general control of fire stations and brigades (s. 14). Part II. relates to the establishment of salvage corps, and Part III. to volunteer fire brigades. Part IV. relates to the appointment of a superintendent, his duties and powers. Part V. provides that the annual expenditure by the Board shall be contributed in the following proportions: three-ninths by the Government, four-ninths by the insurance companies ratably with premium income, and two-ninths by the local authorities. A schedule sets out the charges recoverable from the owner of uninsured property for attendance of the fire brigade.

District Councils.—Act No. 863 of 1904 modifies previous provisions as to voters' rolls (Part II.) and elections (Part III.). Part IV. extends the powers of the local authorities in respect of lighting (Div. I and II), permanent works and undertakings (Div. III.), abattoirs (Div. IV.), footways (Div. V.), reclamation of lands (Div. VI), noxious weeds (Div. VII), and generally (Div. VIII.). Part V. extends the power of making by-laws.

Vermin Destruction and Fencing.—Act No. 905 of 1905, which consolidates and amends the law upon this subject, is an elaborate statute of 264 clauses divided into seven parts. Part II. relates more particularly to vermin destruction, provides for the appointment of vermin inspectors (Div. I), the destruction of vermin on Crown lands (Div. II), the powers and duties of local authorities (including vermin boards) (Div. III), and destruction of vermin

by owners and occupiers (Div. IV). Part III. constitutes vermin-fenced districts and vermin boards and contains the machinery for the election of members (Div. IV.), appointment of auditors (Div. V.), carrying out works (Div. VI.), dealing with revenue and expenditure (Div. VII.), rating (Div. VIII.), raising loans (Div. IX.). Part IV. regulates vermin fencing by vermin trusts, Part V. vermin fencing by the Crown, and Part VI. by owners and occupiers, and Part VII. contains provisions for the enforcement of the Act.

Birds.—*Protection.*—Act No. 828 of 1903 amends the principal Act by providing that the periods for the protection of birds may be varied both as to time and locality by proclamation (s. 2), provides for the issue of birdcatchers' licences for the Northern Territory of South Australia (s. 4), authorises the holder to catch and have possession of protected birds and to sell and export the same (s. 3).

Homing Pigeons.—Act No. 883 of 1905 makes it unlawful for any person other than the owner to destroy or catch homing or racing pigeons (s. 3), or to enter any enclosed land for the purpose of doing so (s. 6), under a penalty of not more than £5, in addition to the full value of the pigeon killed or caught to be paid to the owner thereof (s. 4), but the provisions of the Act do not extend to the owner or occupier of improved or cultivated land destroying any homing pigeon actually on such land (s. 5).

Fisheries.—Act No. 864 of 1904 provides for the regulation of the fishing industry and the protection and propagation of fish. Inspectors may be appointed, close seasons may be proclaimed, use of devices may be regulated or declared illegal, minimum weight of fish to be taken prescribed (s. 4), hatcheries may be established, the destruction of cormorants and other enemies of fish paid for (s. 5), fish unfit for human consumption may be destroyed by any inspector (s. 8) without compensation (s. 9). This Act is amended by Act No. 901 of 1905, which substitutes fresh provisions for the issue of licences, fixes the minimum weight at which whiting and sand-whiting may be taken at 4 oz. (s. 7), and prohibits bunt nets with a mesh of less than 1 in. and $\frac{7}{8}$ in. (s. 8).

Travelling Stock.—Act No. 889 of 1905 provides that where horses, cattle, or sheep are being driven or travelled more than fifty miles the person in charge must have a way-bill containing particulars of the stock, their brands and marks and health (ss. 2, 3), which may be examined by any inspector or other authorised person, who is empowered to seize and impound any stock not included in such way-bill, and of which the person in charge is not able to give a reasonable account (s. 4). Poundage fees and disbursements are payable by the owner and are recoverable from the drover if the owner of the travelling stock prove himself blameless (s. 5). In the event of a lost way-bill provision is made for issue by an inspector or other authorised person of an interim way-bill upon payment of a fee of £1 (s. 6). The introduction from any other State of sheep marked

by a straight cut off the ear or cropped is prohibited under a penalty of £5 for each sheep (s. 7). Regulations may be framed to carry out the Act (ss. 8, 9).

Swine Fever.—Act No. 835 of 1903 is a measure to cope with swine fever by authorising the quarantining or destruction of infected swine and articles used in connection with them (s. 2), the owner of destroyed swine to be entitled to be compensated (s. 3) at three-fourths the current value of healthy stock (s. 4).

Fences.—Act No. 826 of 1903 makes an occupier who avails himself of a dividing fence of which he is not the owner or towards the cost of which neither he nor any previous occupier has contributed liable on three months' notice to pay to the owner one-half of the value, but provides that he shall not be liable in respect of a fence not capable of resisting the trespass of great cattle unless he shall depasture sheep on the abutting land (s. 2); provides machinery where the adjoining owners are not agreed as to the position of the boundary to have the line defined by a licensed surveyor (ss. 3, 4, and 5), at the cost of the parties in equal shares, unless one of the adjoining owners before the survey has correctly defined the boundary, in which case the cost is to be wholly borne by the other of them (s. 6).

Liquor Trade.—*Distiller's Licences.*—Act No. 784 of 1902 provides that a person holding a distillation licence under any Commonwealth statute may take out a storekeeper's licence empowering him to sell on the licensed premises, to be taken away at one time by one person and not to be drunk on the premises, not less than two gallons or one dozen reputed quarts or two dozen reputed pints of liquor (s. 3), such licence to be headed "For Distillers" (s. 4), and not to be held with an ordinary storekeeper's or wine licence (s. 5).

Local Option.—Act No. 897 of 1905 repeals the local option provisions of the Licensed Victuallers Amendment Act, 1896, and provides for a local option petition for a poll (s. 4 [1]), and for its verification by the returning officer of the coinciding electoral district (s. 4 [2]). Upon the petition being verified the Governor is to direct a poll of electors of the district to be taken and, pending the taking of the poll, prohibit the issue of any new licences in the district (s. 5 [1]). The resolutions to be submitted to the electors in respect of each of the classes of licences (1) publican's, (2) wine, (3) storekeeper's colonial wine, (4) storekeeper's, and (5) clubs, are to be four in number as follows:

(1) That the number of existing licences be reduced by one-third.
(2) That the number be reduced by one-sixth.
(3) That the number be not increased or reduced.
(4) That the number be increased in the discretion of the Licensing Bench (s. 5 [3]).

A separate ballot paper is to be issued to each elector for each class of

licence (s. 5 [4]), and the elector may record one vote on each ballot paper (s. 5 [5]). If the number of licences in any class be less than six, the second resolution shall not be put, and if less than three, only the third and fourth resolutions shall be (s. 5 [6]). A resolution must be carried by a majority of the votes cast, there being provision for the votes cast in favour of the first resolution, if insufficient to carry it, being counted in favour of the second resolution, and if the votes recorded for resolutions 1 and 2 are insufficient to carry the second resolution, for all those votes to be counted in favour of the third resolution (s. 5 [7]). If either of first, second, or third resolutions be adopted, the power of the Licensing Bench to grant licences will be correspondingly limited or controlled (ss. 9, 10).

Industrial Legislation.—*Workmen's Compensation.*—Act No. 857 of 1904 declares that in the case of a workman employed in or about a factory but engaged elsewhere on the duties of his employment the place where he is so engaged shall be deemed to be the factory of the employer (s. 2), and provides that in the case of a longshore man compensation in case of injury shall be computed as if his average earnings were £2 per week, whether by one or several (s. 5).

Minimum Wages and Rates.—Act No. 872 of 1904 provides for the election by employers and employés in the clothing trade of boards to fix the minimum price or rate to be paid to any woman, young person, child, or boy between the age of sixteen and twenty-one years.

Early Closing.—Act No. 795 of 1902 removes the limits of time during which his shop may be kept open by a shopkeeper assisted by one member of his family (s. 2), provided he does not employ an assistant not a member of his family (s. 2).

Early Closing Perpetuation.—Act No. 823 of 1903, as its title indicates, makes perpetual the principal Act, No. 749 of 1900 (s. 2), and varies the boundaries of the Metropolitan Shopping District (s. 3).

Shearers' Accommodation.—Act No. 887 of 1905 provides that healthy and comfortable accommodation shall be supplied for shearers where more than six are employed (s. 6). Sleeping space must be not less than 240 cubic feet for each shearer and a separate room must be provided for shearers of Asiatic race (if any). Cooking and serving of meals must be apart, and latrine accommodation such as not to pollute water supply (s. 7). Other sections provide for the appointment of inspectors and the enforcement of the Act.

Furniture Manufacturers.—Act No. 856 of 1904 is a measure aimed at Chinese cabinet-makers, although they are not named. It provides that all furniture manufactured or prepared wholly or partly for sale in South Australia must be indelibly stamped with the name of the manufacturer (s. 5), which it is made an offence to alter or erase (s. 3). Inspectors are to be appointed with power to enter any place where furniture is kept for the purpose of trade and examine the furniture and

question the owner or importer (s. 4), and seize the furniture in case of offence (s. 7).

Fertilisers.—Act No. 825 of 1903 requires the dealer to set forth in the invoice or description of any fertiliser sold by him the exact percentages of the constituent parts as shown in the certificate delivered by the manufacturer or importer in pursuance of the principal Act (s. 4).

Dentists.—Act No. 813 of 1902 regulates the practice of the profession of dentistry by means of a Dental Board. A register is to be kept, and unregistered persons using the title "dentist," etc., are liable to penalties (s. 16), and disentitled to recover fees (s. 18). The holding of diplomas or certificates of recognised colleges and faculties entitles to registration, and right of registration is saved to persons practising or *in statu pupillari* at the passing of the Act (s. 19). Anæsthetics are not to be administered in the absence of a qualified medical practitioner except by dentists holding certain additional qualifications.

Act No. 871 of 1904 modifies the constitution of the Dental Board (s. 4), and the qualifications by examination (s. 6) or otherwise (s. 12), for registration as a dentist, and provides for payment of an annual licence fee as a condition precedent for practising as a dentist (s. 18).

Moneylenders.—Act No. 820 of 1903 empowers the Court in proceedings taken by a moneylender to give relief if satisfied that the interest charged in respect of the sum actually lent is excessive, or the amounts charged for expenses, enquiries, fines, bonus, premium, renewals, or any other charges are excessive, and that in either respect the transaction is harsh and unconscionable, and to re-open previous dealings although purported to be closed, and to relieve against payment of any sum in excess of the amount adjudged, having regard to the risk and all the circumstances of the case to be reasonable, and if any such excess has been paid to order repayment thereof by the creditor, and to set aside, revise, or alter any security or agreement, and if parted with to order the moneylender to indemnify the borrower (s. 1, sub-s. 1), and the Court may exercise the like powers at the instance of the borrower or his surety, and that before the time for repayment shall have arrived, any contract or agreement to the contrary notwithstanding (s. 1, sub-s. 2). And the power may be exercised on any application by a moneylender to prove in bankruptcy proceedings (s. 1, sub-s. 3). The provisions are to apply in every transaction which is substantially one of moneylending by a moneylender whatever its form may be (s. 1, sub-s. 4). False, misleading, or deceptive representation or promises, or dishonest concealment of material facts in the business of moneylending fraudulently to induce or attempt to induce borrowing is made a misdemeanour rendering liable on indictment to imprisonment not exceeding two years or a fine not exceeding £500, or both (s. 2). "Moneylender" is defined as any person whose business is or is held out to be moneylending (s 3), except pawnbrokers carrying on business in accordance with

statutory provisions (s. 3, *a*), registered friendly and building societies (s. 3, *b*) bodies corporate (s. 3, *c*) and persons *bona fide* carrying on the businesses of banking, insurance, or any business not having for its primary object the lending of money (s. 3, *d*).

Savings Bank.—Act No. 824 of 1903 alters the number of trustees from twelve to six (s. 4), to be appointed by the Governor (s. 6), of whom two shall retire at the end of each alternative year (s. 7), and of whom four shall constitute a quorum (s. 10); prohibits deposits by any incorporated or municipal company or body trading for pecuniary profit or gain (s. 12), fixes the minimum deposit at one shilling, and the maximum, except in the case of legally established friendly societies, at £500 (s. 14); provides that interest shall be allowed on the minimum monthly balance on deposits up to £250 (s. 16), but no interest on deposits in excess of that sum except in the case of friendly societies, to whom interest may be allowed on the excess at a rate not exceeding half the rate allowed to ordinary depositors (s. 22); provides that deposits by a married woman shall belong to her in her own right beneficially as if she were a *feme sole* of the age of twenty-one years (s. 17); gives power to the bank in respect of the credit balance not exceeding £100 of a deceased subscriber upon non-production of probate or administration within three months after the death, either to pay to the person in the trustees' opinion entitled, or at their discretion to administer by payment of funeral expenses and debts of the deceased depositor (s. 18); empowers the trustees to invest the funds of the bank (s. 19) on securities of any State of the Commonwealth or guaranteed by the State of South Australia (*a*) on securities of or guaranteed by the Commonwealth, (*b*) on bonds, debentures, or mortgages of any municipal corporation in South Australia, (*c*) on deposit in any bank carrying on business in South Australia, (*d*) or on deposit at the Treasury at Adelaide, (*e*) extends the audit provisions of the principal Act to the securities of the bank (s. 21); empowers the trustees to set apart not exceeding one-fifth part of the profits of each year for a reserve fund, which shall not exceed 4 per cent. on the total deposits for the time being, to meet any loss or deficiency in any year (s. 22).

7. WESTERN AUSTRALIA.

[*Contributed by* R. W. Lee, Esq.]

Acts passed—24.

Early Closing (No. 1).—This amends the Early Closing Act, 1902. S. 1 provides for the incorporation of the amending Act in all copies of the principal Act hereafter printed. The sections are to be re-numbered under the supervision of the Clerk of the Parliaments. Alterations are to be indicated in the margin.

Water Boards (No. 4).—This Act provides for the construction, maintenance, and management of works for the storage and distribution of water. S. 4: The Governor may by Order in Council constitute water areas and water boards. S. 7: The board may be a local authority, or elected, or nominated by the Governor, or partly elected and partly nominated. S. 41: Before undertaking the construction of works in the water area the Board shall (1) cause surveys and levels to be made and taken; (2) prepare plans, etc.; (3), advertise particulars in the *Gazette*. S. 42: The plans, specifications, estimates, etc., shall be open for inspection. S. 46: The Board may (1) enter upon any land shown on the plan; (2) acquire lands under the Public Works Act, 1902; (3) construct and maintain ditches; (4) sink wells and make reservoirs; (5) divert streams. SS. 55-7: The Board is charged with the duty of supplying water to rated land, and may supply water to land not rated on terms agreed. S. 93: The rate is not to exceed *2s.* in the pound on the annual ratable value. S. 113: Boards may borrow subject to the Governor's approval.

University Endowment (No. 6).—This is an Act for the endowment of a State University. S. 2: The Governor may appoint seven trustees, who are to form a body corporate under the name of the Trustees of the University Endowment. S. 4: By way of permanent endowment the Governor may grant or demise Crown lands to the trustees. S. 6: The trustees are to have the entire control and management of all property vested in or acquired by them. S. 13: They may receive out of the income of the trust property such remuneration as the Governor may approve.

Audit (No. 12).—The Audit Act of 1891 is repealed by this Act, which relates to the collection and payment of the public moneys, the audit of the public accounts, and other matters of State finance.

Metropolitan Water and Sewerage (No. 14).—This Act constitutes the Metropolitan Water and Sewerage area, establishes the Metropolitan Board of Water Supply, and defines its powers and duties.

Mining (No. 15).—This Act (in 310 sections) consolidates and amends the law relating to mining for gold and other minerals. Earlier Acts are repealed with the exception of ss. 56-62 (inclusive) and schedule of the Mining on Private Property Act, 1898.

S. 5: The administration of mines is vested, as heretofore, in the Minister of Mines and in wardens appointed by the Governor. S. 10: The Governor may proclaim gold-fields and (s. 13) mineral-fields. SS. 16-41: The Minister and every warden may issue miners' rights. S. 42: The Governor may grant gold-mining and (s. 48) mineral leases of Crown lands to any person not being an African or Asiatic alien. SS. 45 and 53: The term of such leases is not to exceed twenty-one years, but with a right of renewal subject to regulations in force at the time. SS. 115-64: *Mining on private land.* S. 117: Subject to the provisions of this Act and regulations under it (1)

all precious metals on or below the surface are the property of the Crown, (2) and all other minerals on or below the surface of any land which was not alienated in fee simple from the Crown before January 1, 1899. S. 121: The Governor may resume private lands for mining purposes in the manner prescribed by the Public Works Act, 1902. SS. 165-73: *Drainage of mines.* SS. 174-203: *Miners' homestead leases.* SS. 204-25: *Purchase and sale of gold.* SS. 226-66: *Administration of justice.* SS. 267-305: *General provisions.* SS. 306-10: *Regulations.* The Governor may from time to time make regulations for a great variety of matters specified.

Loan.—No. 18 authorises the raising of £1,582,000 by loan for the construction of public works.

Parliamentary Elections (No. 20).—The Electoral Act, 1899, is repealed. Provision is made for the regulation of elections, the preparation of electoral rolls, the issue of writs, nominations, polling, scrutiny, electoral offences, and disputed returns. Part IX. permits voting by post (s. 79) in the case of "any elector (1) who intends to be absent from the State on polling day; or (2) who has reason to believe that he will on polling day be more than five miles from a polling place at which he is entitled to vote; or (3) who, being a woman, believes that she will, on account of ill-health, be unable on polling day to attend a polling place to vote; or (4) who will be prevented by serious illness or infirmity from attending a polling place on polling day." But the intending voter must attend before a resident magistrate or other person appointed thereto if he wishes to avail himself of this section.

Factories (No. 22).—S. 3: The Governor may appoint a Chief Inspector of Factories. S. 7: Factories are to be registered after inspection. S. 20: Women and boys under fourteen are not to be employed for more than forty-eight hours, excluding meal-times, in any one week. S. 23: The same limit is set to the employment of persons of Chinese or other Asiatic race. S. 38, for the better suppression of what is commonly known as "the sweating evil,' provides that a record shall be kept of all persons to whom the occupier of a factory lets or gives out work of any description in connection with textile or shoddy material, and if such person (1) directly or indirectly sublets the work or any part thereof, whether by way of piecework or otherwise; or (2) does the work or any part thereof otherwise than on his own premises, and by himself or his own workpeople to whom he himself pays wages, he shall be guilty of an offence.

Government Railways (No. 23).—This consolidates and amends the law relating to the maintenance and management of Government Railways.

Miscellaneous Acts:

Municipal Institutions.—No. 3 amends the Municipal Institutions Act, 1900.

Fertilisers and Feeding-Stuffs.—No. 7 takes the place of the Act of 1895.

Agricultural Lands Purchase.—No. 10 amends the Agricultural Lands Purchase Act, 1896.

Agricultural Bank.—No. 11 amends the Agricultural Bank Act, 1894.

Roads.—No. 24 amends the Roads Act, 1902.

8. BRITISH NEW GUINEA.[1]

[*Contributed by* W. F. Craies, Esq.]

Ordinances passed—2.

Finance.—Ordinance No. 1 is an Appropriation Ordinance.

Pearl Shell and Bêche de Mer Fisheries.—Ordinance No. 2 amends the Pearl Shell and Bêche de Mer Fishery Ordinances of 1891,[2] 1894,[3] and 1897.[4] S. 2 prohibits the licensing of a ship or boat for use in these fisheries unless it is wholly owned—

(1) by natural-born British subjects.

(2) by persons naturalised by Imperial or colonial legislation.

(3) by persons made denizens of British New Guinea or the Commonwealth of Australia by letters of denization;

(4) by bodies corporate established under and subject to the laws of some part of the King's dominions.

Before the licence is granted, the licensing authority must be satisfied that the applicant is qualified to hold it and a declaration must be made, attested and filed. If any unqualified person acquires any interest "either legal or beneficial" in any manner in any licensed ship or boat, the licence forthwith becomes null and void. Provision is made to protect vested interests in vessels legally licensed in 1904, and for registration of owners, etc., of ships, etc., engaged in the fishery and of agreements relating to such vessels.

9. FIJI.

[*Contributed by* W. F. Craies, Esq.]

Ordinances passed—10.

Finance.—No. 6 legalises certain payments made in 1903 in excess of the expenditure sanctioned by Ordinance for that year.

Native Affairs and Dealings.—No. 5 repeals the Native Dealings

[1] No legislation was passed in 1904 by the Commonwealth Parliament of Australia for the regulation of the territory of British New Guinea.

[2] No. 4 of 1891. [3] No. 4 of 1894.

[4] No. 4 of 1897: Journal, N.S. vol. i. p. 121.

Ordinances of 1891 (No. 4) and 1895 (No. 18),[1] and regulates all contracts between aboriginal natives of Fiji and non-natives, except those made under the Fijian Labour Ordinance, 1895 (No. 11), and the Native Lands Ordinance, 1892 (No. 21).

All executory contracts falling within the Ordinance, if the consideration moving from either party exceeds £20, will be void against the native party unless registered by the non-native party with the magistrate of the district in which the contract is made (ss. 4, 5, 6). The magistrate may not register the memorandum lodged with him if—

(1) it fails to state the terms of the contract with sufficient clearness;

(2) he has any reason to suppose that the performance of the contract by the native party will involve exercise by him of any undue authority over any other native, or will induce or probably involve breach of a regulation of the Native Regulation Board; or

(3) he considers the contract against equity or sound public policy.

In the case of a non-registered contract the native party may recover from the non-native party money paid, goods delivered, or services rendered by the native party under the contract (s. 5).

Provision is made exempting from execution under judgments against a native party communal property and the food crop of such native (s. 7); but a committal order may be made against a judgment debtor on proof of possession of means since the date of the order to pay; and the debt will not be extinguished by imprisonment on such committal (s. 7 [2, 3]).

No. 9 amends the Native Lands Ordinance, 1892 (No. 21), by empowering the Native Commissioner to take legal proceedings on behalf and at the expense of native owners to enforce conditions in leases by natives. See s. 28 of 1892 Ordinance.

No. 10 amends the Native Affairs Regulation Ordinance, 1876 (No. 35), by defining the powers of native stipendiary magistrates as to dealing with indictable offences (s. 2), and by placing within their jurisdiction, subject to qualifications, offences against the regulations made by the Native Regulation Board (s. 2).

Marriage.—No. 4 repeals the Ordinance No. 10 of 1903,[2] and prescribes the procedure to be followed when it is intended to solemnise in a foreign country under the Imperial Foreign Marriage Act, 1892,[3] a marriage between persons one of whom has had his usual abode in Fiji.

Death and Fire Inquiries.—No. 7 amends the Death and Fire Inquiry Ordinance of 1883 (No. 19) by allowing—

(1) the enquiring magistrate to assess the damage to realty or personalty suffered by its owner in consequence of the fire;

(2) the Governor in Council, if the fire was caused by a native, to order and enforce the payment by the natives of the district in

[1] Journal, O.S. Vol. I. p. 88. [2] Journal, N.S. XIV p. 383.
[3] 55 & 56 Vict. c. 23.

which it occurred of the damage so assessed, or of so much thereof as seems just.

The Act was reserved, but has been sanctioned.

Supreme Court.—No. 8 amends the Supreme Court Ordinance, 1875 (No. 14), by providing that when the Chief Justice is administering the Government of the Colony his place as Chief Justice shall be filled by another fit and proper person (s. 2), and by giving the Chief Justice an extended power to make rules for the Supreme Court subject to disallowance by the Legislative Council.

Witnesses.—No. 1 provides for payment of witnesses attending criminal trials in the Supreme Court. The witness does not get his expenses unless he attends on recognisance, *subpœnâ*, or warrant, unless a special order of Court is made. The expenses of attendance, including travelling, are to be regulated by rules of Court and may be disallowed.

Licensing.—No. 2 amends the Licensing Ordinance of 1888 (No. 10) by striking references to boarding and lodging-house keepers out of Schedule B.

10. NEW ZEALAND.

[*Contributed by* GODFREY R. BENSON, ESQ.]

Acts passed—Public, 60; Local and Personal, 20;

Private, deemed to be Public, 5.

Supply.—Nos. 1, 3, 8, 11, and 34.

Bank of New Zealand.—No. 2 amends the Act of the preceding year.

Domain Boards (No. 4).—The Governor may delegate the management of portions of the domain to special boards to be nominated by him for the purpose.

Fencing (No. 5).—Every covenant between landowners which modifies their rights and liabilities in regard to fencing is to run with the land so as to bind assigns, provided that it is registered as an interest in land.

Police Offences (No. 9).—Penalties are imposed on everybody concerned in a boxing match for admission to which a charge is made, or for which the boxers, or either of them, receive any remuneration or prize, unless a permit has been given for the purpose by the police upon the application of some registered club whose rules have been approved by the Governor in Council. The Governor is further authorised to make rules for the regulation of boxing matches.

Law Amendment (No. 12).—This Act provides that any written acknowledgment of receipt of part of a debt in satisfaction of the whole shall operate as a discharge of the whole; that judgment against one of

several persons jointly liable shall not be a bar to action against the others except to extent to which the judgment has been satisfied; that no executor or administrator shall be personally liable under any covenant entered into by a testator or intestate as a lessee of land; that validity of a will may not be impeached after twelve years from the date of probate; that in administration suits costs shall be given to the plaintiff out of the estate unless the Court certifies that the action was brought and continued upon reasonable grounds; and that voluntary conveyances shall not be voided under 27 Eliz. c. 4 if, in fact, they were made *bonâ fide* and without fraudulent intent. It further extends the powers of the Supreme Court to relieve against forfeiture; and it empowers trustees under will or deed and executors and administrators to spend capital on improving the estate and to raise money by mortgage of it for the purpose.

Land Drainage (No. 13).—This is a consolidating and amending Act. It deals in the main with the constitution and powers of the public drainage boards and with the powers of public authorities for the purpose of irrigation. There are also, however, provisions under which one private owner can, by the order of a magistrate sitting with two assessors, obtain power to carry out drainage works for the benefit of his own land upon the land of another.

Maori Antiquities (No. 14).—This Act is aimed at restraining the removal of Maori antiquities out of the country.

Administration Act Amendment.—No. 15.

Supreme Court: Judges' Salaries (No. 16).—This fixes the judges' salaries at £2,000 for the Chief Justice and £1,800 for each of the five puisne judges.

Water Supply.—No. 17.

Divorce and Matrimonial Causes (No. 18).—This is one of the "compiling Acts" passed under the Statutes Compilation Act, 1902. It may be mentioned that divorce is granted on the ground of adultery (of either party); or of desertion; or of habitual drunkenness coupled (on the part of husband) with neglect to support his wife or with habitual cruelty, or (on the part of the wife) with habitual neglect of and unfitness to perform domestic duties; sentence to imprisonment or penal servitude for seven years for attempting to take the life of the petitioner.

Marriage Acts Compilation.—No. 19.

Education Acts Compilation—No. 20.

Local Elections (No. 21).—This is a consolidating and amending Act.

Cook and Other Islands Government (No. 22).—This Act provides for the taking of land by the Government, especially for the development of pearl and other fisheries.

Payment of Members (No. 24).—This is a consolidating and amending Act.

Land Tax and Income Tax (No. 25).—The rates of tax hereby fixed

are: for land, 1*d.* in the £ of assessed capital value; for mortgages, ¾*d.* in the same; for income of individuals up to £1,000, 6*d.* in the £; for the same above £1,000 and for income of companies, 1*s.* in the £.

County Government and Fire (No. 26).—This Act, *inter alia*, provides for the appointment, by county authorities, of fire inspectors with drastic powers in cases of fire.

Native Land Duty (No. 28).—The duty hitherto chargeable upon any alienation of native land is abolished.

Weights and Measures (No. 29).—This Act substitutes a revised table of equivalents for that contained in the Act of the previous year for establishing the decimal system.

Midwives (No. 31).—The registration of midwives and the training and certification of future midwives is provided for.

Destitute Persons (No. 32).—The wages of a person who has, by desertion, left a wife or child destitute, may be attached under this Act. It gives priority over all other liabilities to a charge upon such a person for maintenance.

Mining Act Amendment.—No. 33.

Public Work (No. 35).—This Act provides for the borrowing and spending of £275,000 for fresh railway construction, £75,000 for rolling stock, etc., of existing lines, £350,000 for roads, etc., in "back-blocks," £20,000 for the like in goldfields, and £30,000 in telegraph extension.

Railways (No. 36).—The Governor may enter into contracts for the construction of certain new lines; the cost thereof is to be voted hereafter.

Public Health (No. 37).—This Act relates chiefly to infectious hospitals and mosques.

University Degrees (No. 38).—This Act creates in the University the following new degrees: Doctor of Literature, Master of Laws, Master of Surgery, Master of Science; Bachelor, Master, and Doctor of Veterinary Science, Dental Surgery, Engineering (under the following sub-heads: Mechanical, Electrical, Civil, Mining, Metallurgical, Naval Architecture), Agriculture, Public Health, Commerce.

Mining Companies.—No. 39.

Railways (No. 40).—This Act provides for the duplication of certain lines. The funds voted, £250,000 in all, and £92,500 in any year, are to be raised by Government loans.

Native Land Rating (No. 41).—Under this Act native land which has a European occupier, or which has been bought or leased for value, or which is within ten miles of a borough or town district, or within five of a Government or county road, will be rated in full; while other native land is liable to one-half the rates only, or, if the title is not ascertained, is exempt altogether.

Licensing Law (No. 42).—This Act, *inter alia*, prohibits sale of liquor to persons under the age of eighteen (not being resident on the premises),

sending a person under thirteen to fetch liquor, and selling liquor to a Maori for consumption off the premises.

Railway Servants' Pensions (No. 43).—This deals with the retiring allowances of railway servants.

Education (No. 45).—The numbers and salaries of the teachers in the State schools are the subject of regulation under this Act.

High Commissioner (No. 47).—This Act authorises the appointment of a High Commissioner in lieu of the Agent-General in the United Kingdom.

Fertilisers (No. 48).—Every seller of fertilisers is to be registered, and is to deposit with the Secretary for Agriculture a statement as to the ingredients contained in every brand of fertiliser which he sells. Inspectors are to be appointed who will have power (without request from any buyer) to take samples for analysis of any fertiliser before or after sale. Provision is also made for analysis by a public analyst at the request and cost of the buyer.

Foreign Insurance Companies (No. 50).—Deposits (with the Public Trustee) are already required to be made by any foreign insurance company doing business in the Colony. This Act deals with such deposits.

Shops and Offices (No. 52).—This Act consolidates with amendments the Acts relating to hours, holidays and half holidays, sanitation, seats for female assistants, etc., in shops and offices.

Industrial Conciliation and Arbitration (No. 53).—Doubts had arisen as to the scope of the terms "employer," "industry," and "worker" in the principal Act. This Act resolves them.

Workers' Compensation for Accidents (No. 54).—The mode of computing compensation is regulated.

Dentists (No. 57).—Dentists are required to register and qualify.

V. SOUTH AFRICA.

1. CAPE COLONY.

[*Contributed by* VICTOR SAMPSON, ESQ., *the Attorney-General of the Colony.*]

Acts passed—50; Public, 38; Private, 12.

The legislation of the last session of Parliament consists of fifty measures —including Private Acts—the largest number so far passed at any one session.

Franchise.—Act No. 2 amends our Constitution Ordinance in—to a certain extent—disfranchising members of the Imperial and Naval Forces

within the Colony. In future they must have the "occupation" qualification, and will not be entitled to be registered under the "wages" qualification.

Constitution.—Act No. 47 removes doubt that had arisen in interpreting the provisions of our Constitution Ordinance, which prohibits the registration of "persons of alien birth, unless naturalised by some Act of Parliament of Great Britain and Ireland or the Colonial Legislature." Subjects of the late Republics became naturalised by conquest; but not being naturalised by Act of Parliament, registration officers refused to register them. The statute places them in exactly the same position as natural-born subjects.

Administration of Justice.—Act No. 9 amends the law for the better administration of justice in constituting a single judge of the Supreme Court a "quorum" for the purposes of determining appeals from the Courts of Resident Magistrates. It further provides that in the case of an appeal from a Divisional Court the judge whose decision is appealed from shall not sit as a member of the Appeal Court.

Administrative Functions of Magistrates.—Act No. 33 confers on Resident Magistrates and Assistant Resident Magistrates certain powers for the main purpose of affording additional public facilities with regard to the registration of wills, the administration of estates of insolvents and deceased persons, and the solemnisation of marriages.

Finance.—The Appropriation Act—No. 31—charges the revenue for the service of the year ending June 30th, 1906, with the sum of £7,000,900.

Other Appropriation Acts are No. 36 (Additional Appropriation, 1905), No. 37 (to meet unauthorised expenditure 1904), and No. 32 (re-appropriating moneys appropriated under Act 26 of 1904).

Act No. 26 re-imposes the Income Tax provided for last session by Act No. 36 (1904). An excise duty of 6*s*. per gallon is levied on imported foreign spirits. This is in addition to the customs duty. The excise is not collected on importation, but is made payable upon sale to the consumer.

Act No. 5 further safeguards revenue by penalising smuggling. It also empowers the Governor to refund the duty collected on materials actually used up in the construction of public works for the Imperial Government for defence purposes, and imported by the contractors.

Loans for Local Industries.—Act No. 43 authorises the Government to raise £900,000 (odd) for the works and services specified. £150,000 may be appropriated in granting loans to co-operative associations of wine and other farmers with a view to improving local industries and ultimately rendering the Colony self-supporting as regards farm and dairy produce.

Railways.—Act No. 44 authorises the raising of a loan of £191,000 for the purposes of acquiring and constructing certain railways, including one beyond the borders of the Colony within the territory of the Orange River Colony.

Employers' Liability (No. 40).—Among the most interesting of the public

Acts is No. 40, which extends and regulates the liability of employers to make compensation for personal injuries to workmen.

The position of workmen injured in the course of their employment has always been regarded as more favourable under our common law than under English law, the doctrine of common employment being unknown to our law; but the redress was only attainable by the expensive and dilatory process of an action at law. The object of this Act is to provide a more *expeditious and at the same time a certain* or readily ascertainable remedy. It entitles all persons employed *in any trade, business, or public undertaking within the Colony and its territorial waters* (who are deemed to be "workmen" for the purposes of the Act) to compensation in respect of any personal accidental injury arising out of or in the course of their employment, *if the injury necessitates absence from work for at least three days, and is not the result of any "act done or duty omitted by himself, without safeguarding against the probable consequences, when such consequences are dangerous to human life or limb"* (termed throughout the Act, for the sake of brevity, "gross carelessness").

The right does not extend to domestic servants, messengers, errand boys, or those employed in agriculture, horticulture, or forestry. The right is also denied those in the military and naval services of the Crown, but attaches to other Crown employees. The natural meaning of "workman" is, it will be observed, somewhat extended, the test being whether the claimant was employed in any "trade, business, or public undertaking." The compensation claimable is based on the "average weekly earnings" received at the time of the injury. In the case of payment by the hour, they are to be deemed to be forty-eight times the rate per hour; if the wages are paid daily, six times the rate per day; if the wages are paid monthly, one fifty-second of twelve times the monthly rate; and if paid at a rate per week, the average weekly earnings are to be taken at that rate.

Two claims are recognised by this Act in regard to an injured workman, viz. (1) In which he may receive an allowance of not exceeding 50 per cent. of his wages, as drawn at the time of the injury, during the period of his actual incapacity for work, such allowance to take effect from the date of the injury, but not to run for more than six months, and to be stopped before the expiry of that period upon the happening of certain events, such as recovery, etc. (2) In which he may receive an amount not exceeding £600 as compensation for permanent total incapacity, or £300 for partial incapacity, in calculating which sums any allowance received under the claim already referred to is to be included. The idea of these two claims was to allow a poor man means of subsistence pending the final settlement of the amount of compensation to which after full enquiry he might be found entitled.

The procedure provided is natural and simple. A general jurisdiction is conferred on the Resident Magistrate. On an injury being received

the workman—or a person on his behalf—causes the same to be notified to a police officer or the clerk of the Resident Magistrate of the district, who immediately reports to the Resident Magistrate. The magistrate thereupon requires the District Surgeon to examine the injury, and the latter certifies to the magistrate whether the workman's absence for longer than three days is necessary. On receiving the certificate the magistrate notifies the employer as to the date and place at which he will hold his enquiry. After taking evidence the magistrate—in cases in which the District Surgeon certifies that the accident renders more than three days' absence from work necessary—makes a provisional order for payment of an allowance to be paid from the date of injury, and on the dates upon which the wages would ordinarily have been received. The order is made against the employer and the principals, payment by one discharging the other. The order continues in force—in the ordinary course—for six months.

An employer or principal may apply to set aside the provisional order on the ground that the notice was not served in time, on giving the workman forty-eight hours' notice.

An order may be also set aside on any of the following grounds :

(1) That the injury did not arise out of or in the course of the employment ;

(2) That it was caused by the workman's own "gross carelessness" (as defined in the Act) ;

(3) That the workman is sufficiently recovered to resume work ;

(4) That he has refused to submit to a medical examination by the doctor chosen by the employer ;

(5) That he is entitled to a similar—wholly or in part—allowance from the benefit or other society to which the employer or principal has contributed on a ratio of not less than one-third to the workman's contribution, for the benefit of his workmen.

An appeal lies to the Supreme Court only on the question of "gross carelessness."

Judgment for the full sum to be awarded finally as compensation is obtained in the Magistrate's Court, as in an ordinary civil case.

A distinct feature of this Act is a clause making it a criminal offence to cause serious bodily injury to a workman by gross carelessness, as defined in the Act, whether such injury be caused by the employer or a fellow-workman.

There are many novel features in the Act which it would take too long to describe in detail, but they combine to make the measure a great advance upon anything of the kind enacted previously ; and so far it has worked most smoothly and satisfactorily.

Education.—Act No. 35 is the first statutory enactment that deals seriously with the subject of education. Prior legislation authorised "grants

in aid" of education. The grants have been confined mainly to "public undenominational schools," and schools receiving them have been subjected to Government regulations under which "School Committees" were established. The legal status of these Committees and the legality of the regulations have been somewhat doubtful; but they have never been disputed, and they are by implication legalised by Parliament in this statute.

The Act is intituled "An Act to provide for the establishment of School Boards or the better management of Education." The supreme authority is conferred on the Department of Public Education, under the control of the Colonial Secretary. The Act contemplates the division, within twelve months, of the whole of the Colony into a number of school districts. A School Board is to be constituted for each district, two-thirds to be elected by the ratepayers, and the remainder to be appointed by the Governor. Fresh elections and nominations are to be held and made every three years. The Board is empowered to found and establish new schools—which must, however, be *undenominational*; and they are to be provided for by the Department. All "undenominational public schools" existing at the date of the Act, all State-aided private farm schools, and existing poor schools are eventually—and at latest within three years—to be placed under the control of the district School Board.

The School Board exercises financial control, fixes salaries and school fess, and provides buildings.

A School Committee for each school is to be elected by the parents resident within the district who are owners or occupiers of property therein, and having one or more children on the school's roll.

The School Committees are under the control of the School Board. They are intended to exercise general supervision of the buildings and grounds, to advise the Board generally on matters involving the welfare of the school, to recommend teachers for appointment, and to advise on the question of their suspension as well as to deal with complaints and suggestions of parents.

The Act imposes on Boards the duty of seeing that *all European children over seven are being educated*—at school or privately. If it is found that a child is, through the poverty of its parent, not being educated, the Board is to provide its education at the public cost.

Compulsory school attendance or education privately is not required after the fourteenth year. The *only children exempted from school attendance* are children educated privately, those living more than three miles from the nearest European school, and those suffering from ill-health.

Employment of European children under fourteen during school hours is prohibited.

The education of coloured children is not generally compulsory; but in any district where there is an undenominational public school and sufficient

accommodation, the School Board, with the approval of a majority of ratepayers, may make school attendance of coloured children compulsory.

Local authorities (town councils and divisional councils) are enabled to make grants in aid of education.

Copyright: Fine Arts.—Act No. 46 provides for copyright in certain works of art, viz. paintings, drawings and the designs thereof, photographs and the negatives thereof, and any positives or copies made therefrom, engravings and sculpture.

"Copyright" is defined as the "sole and exclusive right of copying, reproducing, repeating, or otherwise multiplying copies of any work of art and of the designs thereof, of any size, in the same or any other material, or by the same or any other kind of arts."

Where the work is made by an employee in virtue of his employment his employer is deemed to be the author entitled to the copyright.

Where the work is executed for another person for valuable consideration the copyright is not retained by the author unless it is expressly reserved to him by agreement in writing.

The same rule applies to sales for the first time after the passing of the Act.

The term of copyright is as follows: Paintings and sculpture—life and thirty years after death; engravings (not published in or forming part of a book) and photographs—thirty years after end of year in which they are sold or delivered for registration.

The Act does not prejudice the right of any person to represent any scene or object in respect of some representation of which there may be copyright, or the right to copy any work not copyrighted.

The Act provides for the appointment of a Registrar and a Register of Copyrights. There must be registered, *inter alia*, a short description of the nature and subject of the work; the registration of a sketch or photograph is optional.

The fee for photographs is 1*s*. and *for the bioscope films* 1*s*. per hundred.

The Act prohibits the public exhibition of a person's photograph or painting without his consent.

The penalties generally are much the same as in England.

Imprisonment of Women and Young Persons (Act No. 4).—The object of this Act is to prevent young persons and women awaiting trial, and juvenile offenders pending apprenticeship or removal to a reformatory, being subjected to the contamination of gaols.

It provides that such persons may be detained in such places other than gaols as may be appointed therefor by the Governor. It also empowers the Governor to commute a sentence of imprisonment against any woman to compulsory residence—not exceeding the unexpired portion

of her sentence—at a "rescue home." In the working of this Act the Salvation Army has already rendered valuable assistance.

Recovery of Small Debts.—Act No. 15 is intended to facilitate the recovery of small debts in a manner calculated to save unnecessary expense as well to the creditor as to the debtor. The magistrates of this Colony have always enjoyed very extensive civil jurisdiction, nearly equalling that of County Court judges in England; but our law provided nothing like the expeditious procedure available at home for the recovery of small debts. This Act, like the Workmen's Compensation Act, is drafted on quite independent lines. It is confined to the recovery of sums not exceeding £20 claimed in respect of goods sold, money lent, work done, use and occupation, and unconditional acknowledgment of debt. A written demand must first be sent to the debtor and a copy filed with the clerk of the Magistrate's Court in the defendant's district. A summons must then be applied for in that Court by the creditor personally. Particulars are thereupon entered in the Civil Record Book, and the number of days within which appearance is to be entered by the defendant or his agent is specified in the summons, the period to be determined reasonably, having regard to the locality of the defendant's residence and its distance from the court-house.

If, after service, appearance is not entered either personally or by notice in writing within two days after the expiration of the period so limited, the case is to be set down for hearing at the next sitting of the Court, when, if the service has been personal on the debtor, the Court may give final judgment without requiring any evidence: if the service has not been personal, provisional judgment is to be given, upon which execution issues on the plaintiff furnishing security for the full restitution of the amount levied, should the judgment be reversed. The debtor may, within a month, apply to the Court for review on the ground that it was through his *bona fide* absence that service was not effected upon him personally. If the appearance is entered timeously the case is dealt with in the usual manner.

Shop Assistants' Half-Holiday.—Act No. 34 secures for shop assistants throughout the Colony a half-holiday. It is the result of prior legislation failing in its object, mainly through the difficulty experienced in "classifying" shops, and the mutual jealousies of the smaller retailers. A half-holiday is rendered compulsory and is not dependent upon local option or the wishes of the employers. The closing day is generally that selected by the majority of shopkeepers, every shopkeeper being required, within one month of the date of the Act, to notify to the local authority the day chosen by him as the half-holiday; but in Cape Town, Kimberley, Beaconsfield, Port Elizabeth, King William's Town, and East London the day *must be* Saturday or Thursday; if a shopkeeper fails within the time limited to elect, he must close on Saturday.

The attainment of the object of the Act is secured by prohibiting under penalty the employment, whether consented to or not, of shop assistants during the closing hours.

The Act applies to all "places set apart for the sale of goods by retail or by auction," but does not apply to places set apart for the sale of medicines and drugs, refreshments or intoxicating liquor. Each assistant, however, in chemists' shops, restaurants, bars, hotels, etc., must have one half-holiday in each week assigned to him as mutually arranged.

Crimping.—Act No. 18 amends our law relating to merchant shipping, and applies the Imperial law relating to the licensing of seamen's lodging-houses, licences to supply seamen and apprentices, the protection of seamen from imposition, the enticing of seamen to desert, and the harbouring of deserters.

Youths Smoking.—Act No. 24 prohibits the supply of cigarettes and tobacco to youths under sixteen years. *It does not render the youth liable to punishment*, but the dealer offending is subjected to a fine not exceeding £5, or in default to imprisonment for not exceeding one month. Masters and teachers in schools are empowered to seize tobacco, cigarettes, and the like in the possession of boys under the age fixed, and the use of tobacco is constituted an "offence against school discipline."

Railway Passenger Traffic.—Act No. 6 is aimed against those who defraud the Government Railways by travelling without tickets. To be "without a ticket" is not constituted an offence—if there is reasonable excuse—but the traveller, in addition to paying the fare for the "journey contemplated or completed," is liable to pay a fine—termed a booking fee—at the rate of 10 per cent on the fare payable, which is collected immediately.

If a person is unable to produce his season or other ticket on demand, the fare and booking fee must be paid, but the fare may be refunded if, within fourteen days, he satisfies the Department that he was the holder of a ticket, lost or mislaid.

Wild-flowers Protection.—Act No. 16 has for its object the protection of the heath, orchids, and other wild-flowers more or less peculiar to the Cape, and whose extermination is threatened by the indiscriminate pulling-up of bulbs by natives for the purpose of sale. It empowers the Governor by Proclamation to prohibit the gathering in Crown lands, and private lands without the owner's consent, of the bulbs and flowers from time to time specified by him.

Vermin-proof Fences.—Act No. 42 enacts that where the owner of land erects a *vermin-proof fence* which is also beneficial to the neighbouring landowner, the latter must contribute towards the cost of erection—the amount to be settled by agreement or arbitration.

Act No. 22 empowers inspectors of native locations to call upon the residents to assist in the eradication of burr-weed and other noxious plants in the location lands.

Insect Pests.—Act No. 29 aims at checking the dissemination of insect

pests and plant diseases from nurseries. It provides for the compulsory registration and inspection of nurseries with the power of placing them under quarantine.

Thefts of Produce.—Act No. 7 empowers a magistrate sentencing an offender for theft of stock or produce at the same time to impose in addition to the ordinary penalty a fine—when the subject-matter of the theft has not been recovered or when it has considerably deteriorated in value—not exceeding its full market value, with alternate imprisonment if the fine is not paid.

Acts Nos. 3, 8, 10, 14, 17, 23, 39, and 45 effect more or less technical amendments of prior legislation.

2. NATAL.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed—Public, 35; Local, 13.

Cattle Stealing (No. 1).—Natives convicted of this offence are made punishable with whipping—not more than twenty-five lashes—or imprisonment not exceeding five years with hard labour. For subsequent convictions the punishment is more severe, the maximum being fifteen years' imprisonment and thirty lashes or transportation. Women are not to be whipped. Offenders under sixteen are to be whipped with a rod, not a lash.

Native Locations (No. 2).—It has been found desirable to establish Native Locations in the Colony in which natives, with certain exceptions, may be compelled to reside. This Act gives town councils the necessary powers to establish such locations and make by-laws for their regulation, including the prohibition of the sale therein of Kaffir beer and other intoxicants. After provision of such a location all natives—other than freeholders of the borough, or these exempted from native law, or employed in domestic service and furnished by the employers with proper sleeping accommodation—are compellable to reside in such locations, and native sleeping huts or dwellings in the borough may be pulled down.

Land may be compulsorily acquired by a town council for the purposes of such location.

Native Servants (No. 3).—In 1901 an Act was passed to facilitate the identification of native servants. Every native before taking service was required to furnish himself with a pass granted by a Pass Officer after proper enquiry, and masters were required to call for such pass before engaging a native servant.

The present Act extends the policy of this Act to certain classes of natives not originally included—policemen, messengers, jobbers, 'rickshapullers, natives engaged in laundry work and native tenants liable to render services to the landlord in lieu of rent.

Natives moving from the land of one private owner to that of another must get a new pass from a magistrate.

Game (No. 4).—This is an extension of the Game Act, 1891. Buffalo, waterbuck, blue wildebeest, rhinoceros, and Java (or Mauritius) deer, the female bushbuck commonly called the imbabala, and the buck known as the impala and inyala are included in the list of animals which cannot be hunted or killed without the express permission of the Governor.

The close season for wild duck and wild geese is to continue to the end of February only.

Immigrants (No. 7).—The scheme of this Act is to provide regulations for "transit immigrants"—that is to say, labourers from oversea whose introduction may have been approved by the Government of any British Colony or possession in South Africa. The Immigration Restriction Act, 1903, is not to apply to such "transit immigrants."

Supply.—No. 8.

Post Office (No. 10).—This is designed to relieve the congestion of the post offices of the Colony. Any newspaper, printed circular, advertisement or the like remaining unclaimed or undelivered after having lain there for two months may be destroyed by the Postmaster.

Telegraphs (No. 11).—This reserves to the Colonial Government the sole right to transmit and receive "wireless telegrams." The penalty for contravention of the monopoly is a fine of £1,000.

Noxious Plants (No. 12).—The spread of the *Xanthium spinosum* or burr-wood was the subject of very elaborate legislation under the Lands Improvement Act, 1874 (No. 38). The present Act applies its provisions to the thistle known as *Cnicus diacantha.*

Insectivorous Birds (No. 13).—This extends the Wild Birds' Protection Act, 1896, to homing or carrier pigeons, and expunges the word "wild" whenever occurring in that Act.

Commissioners of Oaths (No. 14).—The Governor is empowered from time to time by commission to appoint any fit and proper persons to be commissioners for oaths. The fee for every oath taken is one shilling.

Land (No. 15).—Many original deeds of grant and transfer of lands situate in the Northern Districts of the Colony having been lost or destroyed, this Act empowers the registered owner in such a case to apply to the Supreme Court upon notice to the Registrar of Deeds for a certificate of registered title which may, after satisfactory proof of title given and notices published, be granted in a form scheduled to the Act.

"**Contingencies Fund**" (No. 21).—This Act authorises the creation of a "Contingencies Fund" to "enable the Executive Government from time to time to incur expenditure on such unforeseen services as cannot be postponed without serious injury to the public interest until adequate provision can be made therefor by Parliament." This seems to point to railway expenditure.

Rape and Indecent Assault (No. 22).—Indecent assault is made

cognisable in the Courts of Magistrates and is punishable with imprisonment not exceeding two years with or without hard labour, or by whipping not exceeding twenty-five lashes, or both.

Conveyancers (No. 23).—This is an illustration of the growing tendency to organise professions and trades. No person, not being a notary public or an advocate or attorney of the Supreme Court or in actual practice under licence as a conveyancer at the date of the Act, is to practise as a conveyancer unless admitted and enrolled as a conveyancer by the Supreme Court. Rules for examination and admission of conveyancers are to be made by the Court. Practising without admission and enrolment makes the person liable to a fine of £10.

Military Manœuvres (No. 24).—The facilitating of military manœuvres is the subject of this Act. It gives powers to authorised forces to pass over, camp, construct military works, draw water from and do other acts on any land, with reservations for certain places and the protection of the picturesque. Compensation is to be paid for damage. Persons wilfully obstructing the manœuvres or destroying flags or marks or maliciously cutting telegraph wires or instruments are to be liable to a fine of £10.

Salaries of Judges (No. 25).—The salary of the Chief Justice is raised to £2,000 and of the puisne judges to £1,750 a year.

Closing of Shops (No. 29).—The application of this Act is restricted to municipal boroughs and townships. It empowers the local authority in these to make by-laws regulating the hours for closing all shops. Hotels and other premises licensed for the sale of intoxicating liquors are not affected, nor is anything to interfere with the provisions of the Lord's Day Observance Law, 1878 (No. 24).

The penalty for contravention of a by-law is £5.

Dentists (No. 37).—This permits persons who on January 1, 1904, were *bonâ fide* engaged in the practice of dentistry or dental surgery in the Province of Zululand to register under the Dentists Act, 1896, but restricts such person's practice to Zululand.

Locusts (No. 40).—The insects legislated against are the *Acridium pupuriferum* and the *Pachytylus migratorius* while in the stage known as hoppers or voetgangers. The Governor is given the power to proclaim any portion of the Colony a "locust area," and in such case all owners of land in the area, Europeans, natives, or Indians, are to concur in carrying out any measures the Governor may order for exterminating the locusts. Wilfully driving locusts off any property on to a neighbouring property is punishable with a fine of £50 or six months' hard labour.

Agriculture (No. 44).—This creates a Land Board composed of the Secretary to the Minister of Agriculture and four other persons with a knowledge of agriculture and farming pursuits appointed by the Governor in Council. Regulations are to be made from time to time by the Governor in Council for the administration of the Act.

If any available lands are considered suitable for settlement, the Minister of Agriculture is to submit a plan of any proposed settlement, with an estimate of cost, for approval by the Governor in Council. On approval the Government may acquire the lands included therein by agreement with the owner. The Board may then have the lands surveyed, subdivided, and laid off in allotments, classified as first-class, suitable for special farming; second-class, suitable for mixed farming; third, suitable for pasture or tree planting. The length of lease and terms of letting of each class are defined by the Act.

With a view to promoting the success of the settlements, tramways may be authorised upon any roads between the settlements and railway stations, towns or ports. Water may be supplied, advances made by the Board for improvements and stock and for public works. Butter, cheese, and tobacco factories may be assisted, and sites may be selected for schools.

Plant Diseases (No. 45).—This Act, which repeals the Act of 1881, makes provision for preventing the importation into the Colony of diseased plants. The Minister of Agriculture is to be assisted by an Honorary Board of Advice consisting of five members—the Government Entomologist and four representative fruit-farmers and nurserymen.

Importation of any plant may be prohibited by proclamation, and all plants in any nursery affected with any specified disease may be ordered to be destroyed or isolated. Proper chambers for fumigation are to be provided by every nurseryman. Inspectors may seize diseased plants and have them destroyed. The Act schedules certain insect pests and plant diseases.

Assurance and Insurance Companies (No. 47).—Any such companies, not having their head office within the Colony, must before commencing business in the Colony deposit £10,000 as security with the Colonial Secretary.

Indians and Negotiable Instruments (No. 48).—No judgment is to be given against an Indian on any promissory note or negotiable instrument unless such note or instrument is in English and certified to have been signed before a magistrate by such Indian signatory after being explained to him.

3. ORANGE RIVER COLONY.

[*Contributed by* W. R. Bisschop, Esq., LL.D.]

Ordinances—Lieutenant-Governor in Council, 1 to 25.

Medicine, Dentistry, and Pharmacy.—No. 1 contains—*mutatis mutandis*—similar provisions as the Medical, Dental, and Pharmacy Ordinance Transvaal No. 29 of 1904.

Administration of Justice.—No. 13 amends the Administration of Justice Ordinance Orange River Colony No. 4 of 1902. The number of judges

of the High Court shall be not less than three, but the Lieutenant-Governor shall have power to increase their number. Two judges shall form a quorum, one judge to act during vacation. In case of difference of opinion the Court's decision shall not be given until three judges are present.

Rules are laid down for the admission of attorneys.

The High Court to act as Court of Appeal, in civil cases, to Circuit Courts, and in all criminal cases from the superior Courts of the Colony. Rules are laid down for the procedure in case of such appeals and also for appeals from the High Court to the Privy Council. Lastly the powers are defined of the High Court in case of appeals in criminal cases.

Juvenile Offenders.—No. 5 provides for the removal to reformatories outside the Orange River Colony of juvenile offenders, and authorises the Lieutenant-Governor to warrant under the hand of the Attorney-General the removal of any male offender under the age of sixteen to the Cape Colony in order to be detained there in any of the reformatory institutions established there under the Reformatory Institutions Acts (Cape Colony) of 1879 and 1892.

The Lieutenant-Governor is further authorised, before the expiration of the sentence, to direct that such juvenile offender shall be apprenticed within the Orange River Colony to any useful calling or occupation, the contract of apprenticeship to be entered into before a resident magistrate. The period of apprenticeship shall be either for the time of the unexpired sentence or—with the consent of any parent or guardian—until the offender shall have reached the age of twenty-one years.

Similar apprenticeship can be directed by the Lieutenant-Governor, with the approval of the Chief Justice, regarding criminal offenders who have reached at the time of their sentence the age of sixteen but not yet the age of twenty-one years, and who have been sentenced to imprisonment for a period of not longer than three months. The direction must be given within three weeks, and the term of apprenticeship shall be not longer than four years.

The resident magistrate shall have to enquire into the fitness of the master and into the provisions of the contract, while in case of disobedience or misconduct on the part of the apprentice, the contract may be cancelled and the offender shall have to undergo the whole or part of his original sentence.

Imprisonment.—No. 16 empowers magistrates to inflict imprisonment with or without hard labour for a period not exceeding six months in default of payment of fines, and to pass alternative sentences to that effect.

The same may be done by any special justice of the peace in the case of municipal regulations, provided that such imprisonment shall not exceed a period of fourteen days. Special justices of the peace are further em-

powered to sentence offenders for breaches of the provisions of Part II. of Chapter CXXXIII. of the Law Book, and they shall have jurisdiction under s. 15 of the Prisons Ordinance, 1903.

No. 17 contains similar provisions to the Prisoners' Detention Ordinance Transvaal No. 36 of 1904, with the omission of the power given to the Lieutenant-Governor to remove prisoners from the Colony of the Transvaal to another Colony or territory for imprisonment or detention.

Master and Servant.—No. 7 repeals Chapter CXI. of the Law Book and regulates afresh the relations between masters and servants in the Orange River Colony. Parts I. and II. regard white servants, their contracts of service and their rates of wages. Such contracts shall not be for less than one month, nor—if made outside the Colony—made in any other way except in writing and recorded by a resident magistrate within the Colony, provided that such contract shall not be for any period exceeding three years from the date of arrival of the contracting servant within the Colony. Contracts made in British possessions or other foreign States not in Europe must moreover be made before a magistrate or any other competent authority, or before any British consul.

Penalties are set out for inducing servants to leave their master's service or the attempt thereto—so frequently committed; for using violent obstruction in order to prevent servants from working or from accepting service, or to force them to enter any club or association, or for violently obstructing another on account of his not belonging to a club or association, or of his refusing to comply with any rules of such club or association, or for violently interfering with the master's freedom of regulating the employment of his servants.

Unions of workmen and masters are admitted, in order that they may consult each other regarding the common rate of wages or the fixing of a minimum rate of wages, or the number of hours of work which they shall require.

A master shall not be bound to give a character but is bound not to give a false one, and penalties are provided for giving or using false characters, or for withholding wages. Magistrates may give judgment for wages due when they punish a master for unlawfully withholding the same. No fine paid or imprisonment undergone by a servant shall cancel the contract, but such cancellation may be asked from the Court in case of conviction of either servant or master.

Part II. treats of offences committed by white servants and of their punishments.

Part III. provides for the contracts between masters and black servants. No contract for either husband or wife or both shall last longer than two years, and written contracts for over one year shall be signed in presence of a magistrate. A father can make a contract for his minor children with certain provisions, but no services shall be required from the wife or children on

account merely of their residing on the ground of their husband's master. Death of husband or father dissolves the contracts of wife and children after one month from his death.

The offences are set out of which coloured servants can be guilty and their punishments.

Part IV. contains miscellaneous provisions regarding the procedure in case of prosecution of servants, either white or coloured, the jurisdiction of the Court of resident magistrates and justices of the peace, the obligation of the servant to return to work after having expiated his offence, and the punishments for the servant's desertion or unlawful absence.

Municipalities.—No. 6 repeals Chapter LXXXIV. of the Law Book and Law 1 of 1893, and amends the law relating to municipalities. It provides for the continuation of the constitution of existing municipalities and the establishment by proclamation of the Lieutenant-Governor of new municipalities, either on petition being presented by twenty-five householders or without such presentation. The provisions are set out which shall apply to the newly constituted municipalities, and to the manner in which the first election of councillors in them shall take place. The Ordinance further contains the rules regarding all municipalities as to the qualification of councillors and their election, of voters and the voters' rolls, and the duties of mayor and officers, and the proceedings of the Council. As to the making of valuations, certain provisions of the Bloemfontein Municipal Ordinance Orange River Colony No. 25 of 1903 shall apply.

Municipal property may be disposed of, if the council of the municipality has decided so to do by a majority of three-fourths of the full number of members of the council, and if such resolution has been sanctioned by the Lieutenant-Governor and has been confirmed by a voters' meeting.

The revenues of the council shall consist of rates, quit-rents, licence moneys, taxes on natives, fines, and other rents, fees, and charges. Ample provisions are made regarding the assessment and recovery of moneys due to the council. Powers are given to the council to issue loans.

The powers of the Councils are set out more particularly regarding the tramways, the native locations, and the licences for vehicles, as well as to their being entitled to make new regulations and alter existing ones.

The Ordinance ends with enumerating the penalties for contravention of its provisions or the regulations thereunder.

Jagersfontein.—No. 22 provides for the establishment of a municipality for the town of Jagersfontein.

Villages.—No. 12 provides for the proper management of villages and other communities not being municipalities, and repeals Part I. of Chapter LXXXIV. of the Law Book and Proclamation No. 8 of 1902. Regulations are laid down for the election of the members of boards of management, their powers, and the purposes for which the boards may

make regulations, as well as the manner in which such regulations may be enforced.

Local Loans.—No. 9 provides rules for the granting of loans by the Lieutenant-Governor to local authorities out of the funds voted by the Legislative Council for the purposes set out in the Ordinance. The purpose for which the loan is required shall be stated in each application for a grant, and such grant shall not be taken into consideration until the Treasurer shall have been satisfied as to the sufficiency of the security for its repayment and shall have given a certificate in favour of the loan. Every loan shall be a charge upon the rates, revenues, and land of the local authority to whom it is granted, carry 5 per cent. interest and be redeemable in instalments within a period not exceeding thirty years, the first instalment to be due within a period not exceeding five years. The grant of loans shall be published in the *Gazette* and be enforceable in manner provided in the Ordinance.

Special provisions are made for the repayment of loans which are granted upon other security than that of rates. Local authorities remain subject to the provisions of Chapter LXXXVIII. of the Law Book regarding the collection of debts contracted by public bodies.

Municipal Loans.—No. 21 provides for the grant of a loan not exceeding the sum of £100,000 to the Municipality of Bloemfontein for the improvement of the watercourse running through the city and known as "Bloem Spruit," under the Local Loans Ordinance Orange River Colony No. 9 of 1904, mentioned above.

Registration of Deeds.—No. 20 amends the Deeds Registry Ordinance Orange River Colony No. 33 of 1902 in respect of ss. 8 and 20 of that Ordinance and the admission for registration of foreign powers of attorney.

Wills and Powers of Attorney.—No. 11 repeals Chapters XCIII. and CV. of the Law Book and brings the law relating to the execution of wills in accordance with the English system as it prevails in the Cape Colony and the other South African Colonies. A notarial will is no longer to be invalid for not being read over to the testator in the presence of the witnesses to the will.

The same equalisation is enacted regarding the attesting of powers of attorney in this Colony. Rules are laid down for the proper attestation of powers of attorney and the registration of general powers in the Deeds Office.

Survey.—No. 18 amends the Lands and Survey Ordinance Orange River Colony No. 16 of 1903.

No. 19 makes provisions to facilitate a trigonometrical survey of the Colony and to provide for the preservation of trigonometrical beacons: cf. the Trigonometrical Survey Ordinance Transvaal No. 11 of 1903 (Journal, N.S. vol. xiv. p. 407).

Mining of Precious Metals (No. 3).—A Department of Mines is created.

The head of the Department and the Inspectors of Mines shall from time to time be appointed by the Lieutenant-Governor, while the areas of the districts within which these Inspectors shall respectively have authority shall be defined and altered by the head of the Department. Claim inspectors shall be appointed by the Lieutenant-Governor and regulations shall be made by him with regard to their duties.

Prospecting without licences shall be allowed to every landowner on his own land, provided that he gives notice of his intention so to do to the resident magistrate. All other persons shall require a licence from the magistrate before being entitled to prospect, the licence to state the period and the area for which the same shall be granted. In order to prospect on Crown lands a grant from the Lieutenant-Governor shall be required, which prospecting rights shall cease on the Proclamation of the particular area as a public digging.

Notice to the magistrate of discovery of precious metals on unproclaimed land by the discoverer shall be compulsory.

Rights and duties of the prospector are set out in the Ordinance.

On receiving a report of the head of the Mines Department that precious metals have been found on private land, farm, or Crown land which has been prospected, the Lieutenant-Governor is entitled to proclaim such land or farm a public digging. In order to advise him as to the payability of the discovered precious metals the Lieutenant-Governor shall be entitled from time to time to appoint a board of not less than five members.

Full provisions are made for protection of discoverer's and owner's rights, of the area of reef claims as well as of alluvial claims, the right of Mynpachten and the particulars of licences, transfer, division, and other rights connected with a Mynpacht, the discoverer's and the owner's rights on alluvial fields on private and Crown lands, and the owner's rights to reserve areas for himself, and the particulars thereof.

Provisions are also made for the resumption of ownership of alienated Crown lands, of the throwing open of private lands, and the sale of Crown lands.

Opportunity is made for acquiring mutual rights in the issue of claims and licences, and of pegging in respect of land which is proclaimed a public digging, while particulars are set out of the persons who will be entitled to peg, and of the issue of further licences in case a whole area is not pegged off, or of the refunding of licence money where too many licences have been issued.

The Ordinance provides regulations regarding alluvial deposits discovered on reef claims and the rights of registered holders to such claims. Also provisions are made for the erection of machinery and the rights of way to mining property, the erection of buildings by the Government, the rights of the Government to revoke the proclamation of a public digging, and the expropriation of claims on such revocation. Regulations are made for

the deposit of plans of claims, regarding the transfer of claims and the number of claims which any person is entitled to hold, the number of claims to be acquired by transfer to be unlimited. Provisions are made in case of forfeiture of claims, regarding the rights to construct roads and water-ways on public diggings.

A Diggers Committee may be appointed by the Lieutenant-Governor for any alluvial digging, and the rights of such committee are defined. Special provisions are made for the farm Lindequesfontein. The Ordinance makes further ample provisions regarding the surface and water rights of the owner, and the respective rights of the holder of a water right and a mineowner. Further provisions are made with regard to rights to wood, as well as regarding the special registration of Mynpachten, or claims, or particulars thereof, together with any mining, water rights, rights of way, rights of leading water, machinery, stands, or any other rights or servitudes which may be held in connection with the Mynpacht.

Further provisions are made regarding the trading in precious metals, which shall only be in the hands of licensed dealers in unwrought precious metal, while penalties are imposed for the unlawful possession of unwrought precious metal.

The Ordinance ends with the regulations regarding stands for mining purposes and the fees payable therefor, while the further fees to be payable in stamps are set out in the second schedule.

The following laws are repealed:

Chapter LXX. and Chapter CXV. of the Law Book, Law 27 of 1894, Law 13 of 1896, Law 20 of 1897, Law 10 of 1898, Law 17 of 1899, and Ordinance No. 4 of 1903.

Mining of Precious Stones.—No. 4 makes similar provisions for the mining of precious stones as are contained in the foregoing Ordinance and the Precious Stones Ordinance Transvaal No. 66 of 1903.

Mining.—No. 8 regulates the mining of base metals and minerals. The owner has a right to prospect without licence on his own property, but every other white person is obliged to obtain a licence together with the owner's permission. In order to prospect on Crown lands the grant of a licence is necessary from the Lieutenant-Governor, and—in case such Crown land is leased—also a permission from the lessee. Discoveries must be notified to the Inspector of Mines or the resident magistrate.

It is prohibited to mine on proclaimed areas or in places excluded by the Lieutenant-Governor, who may make regulations for the proper carrying out of the mining operations.

The Lieutenant-Governor may authorise the collection of a tax on the value of any base metal or mineral won.

The rules regarding statistics, the duties of officials, the records to be kept by the magistrates, the appointment of officials, the publicity of the magistrates' records and the inspection of all books kept at the mine, as

well as the jurisdiction of the resident magistrates are similar to the provisions of the above-mentioned Ordinance regarding the mining of precious metals.

Companies.—No. 24 repeals Article 2 of Chapter C. of the Law Book and amends the law with reference to companies registered with limited liability in regard to their formation and their memorandum of association, and provides for the registration of foreign companies. The term "foreign companies" shall comprise any company, association, or partnership duly incorporated in accordance with the laws of any foreign country under a definite name, whether limited or unlimited, which will be engaged in any business or dealings in the Orange River Colony, either by directors appointed for such purpose or by a managing director, manager, secretary, or agent on behalf of such company. Companies of which the head office is within the Colony, and also banking, assurance, and savings bank businesses are excluded.

Revenue.—Nos. 14 and 25 appropriate the sums of £266,936 and £59,987 for the service of the years ending June 30, 1904 and 1905, respectively.

No. 15 appropriates the sum of £8,941 15*s.* 11*d.* for the purpose of covering certain unauthorised expenditure.

Repeal of Laws.—No. 10 declares Chapters XVII. and XXVI. of the Law Book, eleven of the laws passed between the years 1894 and 1899, and Proclamation No. 2 of 1902 to be no longer of any force or effect.

4. TRANSVAAL.

[*Contributed by* W. R. Bisschop, Esq., LL.D.]

Ordinances (Lieutenant-Governor in Council)—Public, Nos. 1 to 50 of 1904; Private, Nos. I. to V.

Attorneys to the Supreme Court.—No. 1 re-enacts the provisions of the law in force in the late South African Republic for the admission of certain persons who served as clerks to the State Attorney to any of the judges or in some other similar capacities as attorneys of the Supreme Court.

Administration of Justice.—No. 12 amends the *Magistrates' Court* Proclamation Transvaal No. 21 of 1902 (Journal, N.S. Vol. V. Part II. p. 390), in regard *inter alia* to the provisions regulating the power of magistrates to grant orders for arrests and interdicts, the authority of the Supreme Court to review sentences, and by creating and regulating the magistrates' power to issue.

No. 13 confers upon the Supreme Court of the Transvaal jurisdiction to hear *Appeals* from the Courts of Swaziland and authorises judges of the Supreme Court to act as judges of Swaziland Circuit Court.

No. 19 consolidates the law as to the appointment and jurisdiction of *Resident Justices of the Peace* and *Justices of the Peace*, leaving the appointment in the hands of the Lieutenant-Governor, who defines the area of their jurisdiction and fixes the places where the Courts shall be held. The jurisdiction of the Resident Justice of the Peace is restricted to contraventions under certain acts which are set out in a schedule to the Ordinance, and the procedure in his Courts shall be the same as that in the Courts of the Resident Magistrates. He shall be *ex officio* Justice of the Peace and marriage officer for natives. Justices of the Peace shall administer oaths and further exercise all powers which any law may confer upon them.

No. 22 repeals the *Supreme Court Appellate Jurisdiction* Extension Ordinance Transvaal No. 12 of 1902 (Journal, N.S. Vol. V. Part II. p. 390) and enacts that the Supreme Court of the Transvaal shall no longer act as Supreme Court for the Orange River Colony.

No. 31 amends the Administration of Justice Proclamation Transvaal No. 14 of 1902 (Journal, N.S. Vol. V. Part II. p. 389) and institutes *Divisional Courts*. These Courts shall consist of one Supreme Court judge, who will try the case if submitted to him. Appeal from these Courts shall lie to the Supreme Court. The Ordinance also makes the Witwatersrand High Court procedure applicable to appeals to the Supreme Court against the decision of one judge sitting in vacation. It further alters the period of articles for persons who are articled or admitted as attorneys in other British Colonies, and gives power to the judge to make rules as to the authentication of documents executed outside the Colony for use within the Colony.

Criminal Law: Theft of Stock and Produce.—No. 6 consolidates and amends the law relating to the theft of stock and produce, repealing Law No. 4 of 1891 and Law No. 2 of 1894, and specially regulating the owner's claim for return of stock or damages brought against the accused person at his trial. Further, the Act fixes a penalty for the unauthorised entry of a farm, and regulates the apprehension without a warrant of suspected persons and the searching of persons and houses. It forbids purchasers and sellers of stock and produce to do business between sunset and sunrise, and renders it compulsory for certain purchasers to obtain certificates of purchase. Rules are made for the purchase of stock from coloured or unknown persons and for the preservation of hides.

No. 26 defines the *criminal offences* coming under the description of housebreaking and such like offences, extortion, counterfeiting coin, and buying, selling and dealing in, uttering, tendering, and possessing counterfeit coin, clipping, sweating, or defacing coin, the imputation and pretension of making use of witchcraft, assaulting, resisting, or obstructing a police officer in the execution of his duty, and the attempting to commit any statutory offence. It provides punishments for the commission of these offences and gives the magistrates power to impose a punishment of whipping.

Criminal Procedure.—No. 47 slightly amends the Criminal Procedure Code, 1903.

Law of Evidence.—No. 21 makes it competent and even compulsory for the wife or husband of an accused person to give evidence for the prosecution in cases of bigamy.

Imprisonment.—No. 36 provides for the imprisonment within the Transvaal of criminals sentenced in adjacent territories until the expiration of their sentence, and for their removal to another Colony or territory for imprisonment or detention.

Gaols.—No. 2 amends the Gaol Law (No. 14) of 1880, by defining the word "gaol" as well as the jurisdiction of the officer in charge of places used as gaols and his power to make regulations.

No. 20 consolidates and amends the law regarding the trial of certain offences committed in gaols. It sets out the jurisdiction of the officers in charge of the prisons at Johannesburg and Pretoria, of convict stations, and the jurisdiction of Resident Magistrates as to prison offences. All sentences shall be subject to review by the Supreme Court. All offences other than prison offences which are committed in prison shall be tried in the Courts of the Resident Magistrates.

Arbitration.—No. 24 provides for the settlement of differences by arbitration and applies with certain modifications the provisions of the English Arbitration Act, 1889 (52 & 53 Vict. c. 49), to the Transvaal. The principal additions regard the matters excluded from arbitration, the disinterestedness of umpires, and the compulsory attendance of witnesses.

Census.—No. 9 provides for the taking of a census from time to time which may be ordered by the Lieutenant-Governor by a Proclamation, published in the *Gazette*.[1] The census is to be held by census officers under the superintendence of a Commissioner of the Census, and these officers shall have access to any land, house, or enclosure and be entitled to ask all such questions of all persons as they may be directed by the Lieutenant-Governor to ask. Moreover, schedules shall be left at the houses to be filled in and returned to the enumerator or supervisor appointed for the area. Abstracts of these shall be made and returned to the Lieutenant-Governor and be published.

Naturalisation.—No. 10 amends the Naturalisation of Aliens Ordinance Transvaal No. 46 of 1902 (Journal, N.S. Vol. V. Part II. p. 398), creating facilities for the naturalisation of persons who have resided in the United Kingdom or its Colonies, and recognising certificates of naturalisation under the Imperial Naturalisation Act, 1870.

Unskilled non-European Labourers.—No. 17 regulates the introduction into the Transvaal of unskilled non-European labourers.

Powers are given to the Lieutenant-Governor to appoint a Superintendent

[1] The first census under this Ordinance was taken on April 17, 1904, in accordance with Proclamation No. 19 (*Gazette*, March 25, 1904).

and inspectors of labourers, while the general powers of the authorities are described in the Ordinance itself.

In order to be entitled to introduce labourers into the Colony it is necessary for the importer to have a licence from the Lieutenant-Governor, and the conditions are set out which have to be complied with before such licences can be granted. No labourer shall enter the Colony unless previously having entered into a contract of service, and until such contract has been registered at the office of the Superintendent. The conditions for the execution of such contracts are set out as well as the conditions to which the introduction of labourers shall be subject—viz. constant employment in the service of a person holding a licence, compulsory return to his country of origin after the contract has come to an end, and the application of certain provisions of this Ordinance. Contracts to be for no longer period than three years, but to be renewable for a second period of three years, and to be transferable to other persons holding licences. Provisions are made for the control of the labourers so introduced, *e.g.* as to the supervision by the Superintendent regarding their removal, the returns to be made by their employers at the office of the Superintendent, the prohibition of their acquiring landed property, the obligation of their holding passports and residing on the premises where they are employed, the necessity of their being registered and provided with permits in case of absence from the premises on which they are employed.

Special regulations are made for the return of the labourers to their country of origin, while the Lieutenant-Governor is entitled to make regulations for the due observance of these provisions. Penalties are imposed for the breach of these regulations, and for the committing of such offences as are created by the Ordinance itself.

Labourers shall not be allowed to bring their wives and families with them, and the Ordinance shall not apply to the introduction into the Colony of British Indians to be employed in the construction of railways.

The provisions of the Master and Servants Law, No. 13 of 1880, and of Law No. 3 of 1885, or any amendments thereof, and of ss. 2 to 8 of the Peace Preservation Ordinance Transvaal No. 5 of 1903 (Journal, N.S. Vol. IV. Part II. p. 406), shall not apply to any labourer introduced under this Ordinance or to any contracts made thereunder.

Marriages.—No. 39 makes some slight amendments in Laws No. 3 of 1871, and No. 3 of 1897, relating to the marriages of white and coloured persons.

Trade Marks.—No. 3 amends s. 7 of the Trade Marks Registration Proclamations Transvaal Nos. 22 and 29 of 1902 (Journal, N.S. Vol. V. Part II. p. 388), by extending the authority of the Registrar in cases of opposition to condemn in costs and to demand security for costs from persons residing outside the Colony.

Companies.—No. 30 amends Law No. 5 of 1874, and provides for the

alteration of the objects for which the company was originally formed, for the consolidation, subdivision, and conversion of its registered capital, and for the reduction thereof. In a fourth subdivision the Act gives the definition of special resolutions and provides for their registration.

Accountants.—No. III. of the Private Ordinances provides for the registration of Accountants in the Transvaal. It restricts the use of the title of "Public accountant" to those who are registered as Public Accountants under the Ordinance, and incorporated into one body corporate by the name of the Transvaal Society of Accountants. It provides rules for enabling a person entitled to be registered as a member of the society, including among them the members of any of the Societies of Accountants in England and Wales, Scotland and Ireland, whose membership is declared to be sufficient by the by-laws of the society for the time being in force for admission into the society. It sets out the offences for which members can be suspended from their membership, and the procedure to be followed in order to obtain such suspension. It further defines the powers of the Council, the purposes for which by-laws may be made, and the manner in which these may be altered.

Great Stock.—No. 15 provides for the branding of great stock and for the registration of such brands to commence on and from July 1, 1904.

Fish.—No. 46 repeals Law No. 5 of 1880, and makes new provisions for the protection of fish in the Transvaal by regulating the close season and the obtaining of licences for fishing.

Medicine, Dentistry, and Pharmacy.—No. 29, whilst repealing Law No. 12 of 1886 and Proclamation No. 1 of 1902 (Journal, N.S. Vol. V. Part II. p. 387), and two First Volksraad Resolutions, makes provision for the registration of medical practitioners, dentists, chemists and druggists, midwives and nurses, and for the better regulation of medical practice and the sale and dispensing of drugs, medicines and poisons.

Infectious Diseases: Leprosy.—No. 23 repeals Law No. 15 of 1897, and amends the law regarding the isolation and detention of persons affected with leprosy. It maintains the by-laws and regulations made under the repealed Law.

Rabies.—No. 27 provides powers for the Lieutenant-Governor to make regulations for the prevention of the introduction of rabies into the Transvaal and its spreading within the Colony.

Diseases among Cattle.—No. 38 makes further provisions for the prevention of the spread of the disease among cattle known as East Coast Fever.

Diseases among Plants.—No. 16 provides measures for the prevention of the introduction and spread of the pests and other diseases amongst plants.

Land Survey.—No. 8 provides for the appointment of a Board to discharge the duties of a board of examiners under the Land Surveyors

Ordinance Transvaal No. 55 of 1903 (Journal, N.S. Vol. VI. Part II. p. 407).

No. II. of the Private Ordinances provides for the incorporation of the Institute of Land Surveyors, which will enrol among its members all land surveyors admitted in the Transvaal and will exercise control over them.

Fences.—No. 7 regulates the erection and maintenance of dividing fences, dividing the Colony into areas of proclaimed property and unproclaimed ground, and creating offences of leaving gates open, doing injury to or damaging any fencing.

Prospecting.—No. 11 regulates the registration of prospecting contracts.

Town Lands.—No. 14 regulates the ownership of town lands, repealing Law No. 17 of 1898, Volksraad Resolution dated October 13, 1868, and certain sections of the regulations for towns in the late Republic published in the *Staats Courant* of October 25, 1899.

Burger-rights.—No. 18 regulates the taking up of title deeds for land which was sold or granted by the Government of the late South African Republic as burger-rights or in compensation for burger-rights, and limits the period within which such title deeds should be taken up to such times as the Lieutenant-Governor shall fix by Proclamation.[1] The Ordinance does not apply to land granted by the Government of the late Republic under Law No. 8 of 1886 (cf. Ordinance 25).

Occupation Farms.—No. 25 provides for the occupation of farm lots and *erven* which were allotted by the late South African Republic in pursuance of Volksraad Resolutions dated July 31, 1883, Art. 982; May 12, 1888, Art. 71; June 9, 1888, Art. 425; and Executive Council Resolution of January 3, 1899, Art. 1, but were never taken up in the district of Zoutpansberg, Waterberg, and Middelburg.

Public Roads.—No 44 regulates the establishment of public roads within the districts of local authorities upon the petition of these authorities, the roads so established to vest in the local authorities. It gives provisions for compensation by arbitration to persons damaged by the proclamation and the establishment of public roads, and makes rules for the diversion and closing of roads for mining purposes (either permanently or temporarily) in case mining operations are carried on which may be dangerous to any such public roads. Special provisions are contained in the Ordinance regarding the Main Reef or Witwatersrand Road.

Municipal Corporations.—No. 41 amends the Municipal Corporation Ordinance Transvaal No. 58 of 1903 (Journal, N.S. Vol. VI. Part II. p. 409) and contains special provisions for the constitution of municipality boards and the election of their members.

[1] This was done by Proclamation No. 45 of 1904 (*Gazette* of August 19, 1904, p. 383), which fixed December 31, 1904, as such date. On p. 384 of the same *Gazette* the forms of applications for title deeds are set out.

No. 49 amends the Municipality Election Ordinance Transvaal No. 38 of 1904 (Journal, N.S. Vol. VI. Part II. p. 409) regarding the election of councillors.

Pretoria.—No. 50 extends the powers of the Council of the Municipality of Pretoria by applying ss. 36 and 65 of the Muncipal Corporation Ordinance Transvaal No. 58 of 1903 to it.

Johannesburg.—No. I. of the Private Ordinances adds to and further amends the Johannesburg Municipality Borrowing Powers Ordinances Transvaal No. 23 of 1903 (Journal, N.S. Vol. VI. Part II. p. 410).

No. IV. of the Private Ordinances confers further powers on the Johannesburg Town Council, specially regarding the auditing of its accounts.

Witwatersrand.—No. V. of the Private Ordinances provides for the continuance, extension, and government of the townships of Germiston and Georgetown in the Witwatersrand area.

Rand Water Board.—No. 48 extends the powers of the Rand Water Board as instituted under the Rand Water Board Incorporated Ordinance Transvaal No. 32 of 1903 (Journal, N.S. Vol. VI. Part II. p. 416) and provides for the transfer to the Board of the undertakings of the Braamfontein Company, Limited, the Johannesburg Waterworks, Estate, and Exploration Company, Limited, and the Vierfontein Syndicate, Limited. In its financial provisions it empowers the Board to raise money by the issue of stock and other paper of credit, and amply regulates their issue and redemption.

Customs.—No. 5 amends the law relating to customs in some minor respects.

Finances.—Nos. 32, 33, and 34 apply the sums of about £11,453, £1,084,459, and £4,132,284, for the service of the years ended by June 30, 1903, 1904, and 1905, respectively.

No. 35 provides money out of the Treasury balances for the construction of certain works and purposes.

Stamp Duties.—No. 40 further amends the Stamp Duties Amendment Proclamations Transvaal Nos. 12 and 26 of 1902 (Journal, N.S. Vol. V. Part II. p. 388) and provides rules for the affixing and defacing of stamps. It also amends the scale of charges.

Currency.—No. 42 declares the law relating to the currency of the Transvaal and applies the rules regarding the use of British coins within the United Kingdom to the use of both British and Transvaal coins within the Transvaal.

Rates.—No. 45 amends the Local Authorities Rating Ordinance Transvaal No. 43 of 1903 (Journal, N.S. Vol. VI. Part II. p. 410) in certain respects.

Errors in Ordinances.—No. 4 corrects errors in certain Ordinances in force in the Transvaal.

Validation of By-laws.—No. 28 contains provisions for the validation

of a large number of by-laws which were passed under the Municipal Corporation Ordinance, 1903, but not duly published, especially those of the Rand Plague Committee.

Repeal of Laws.—No. 43 repeals certain Volksraad Resolutions of the late South African Republic.

Military.—No. 37 repeals the Volunteer Corps Ordinances Transvaal Nos. 5 and 38 of 1902 (Journal, N.S. Vol. V. Part II. p. 394), and makes provisions for the formation, discipline, and maintenance of volunteer corps.

VI. WEST AFRICA.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

1. GAMBIA.

Ordinances passed—11.

Inland Navigation.—Nine ordinances were passed between 1850 and 1898 making various provisions with respect to the navigation of the Gambia, wharfage, tonnage, buoyage, licensing of boats and canoes, etc. These are now re-enacted with amendments and additions in a consolidation Ordinance (No. 1). The additions relate to settlement of disputes between owners and sailors, collisions, compulsory pilotage, lights, and the establishment of a Navigation and Pilotage Board.

The Board consists of the Harbour Master and not more than four other members to be appointed by the Governor. They have full powers of inspection and enquiry as to all matters arising under the Ordinance, and can make by-laws.

The provisions with regard to the engagement and payment of sailors and boatmen are largely taken from the Merchant Shipping Act, 1894 (Part II.).

The Ordinance contains a declaration that the navigation of the River Gambia is open and free to all foreign vessels, subject however to the laws, rules, and regulations to which British vessels are subject. All vessels arriving within the River Gambia must come to anchor at Bathurst and pay all duties there, but no tonnage dues are payable.

Sugar Convention.—Effect is given to the Convention of 1902 by No. 2, which authorises the Governor to issue prohibition orders. Two orders have since been issued prohibiting the import of sugar from named countries, but a third removes from the black list the name of the Dominican Republic, which appears to have been falsely charged.

Registration of Designs.—The Ordinance No. 4 of 1903 is summarily repealed (No. 7) without any substitution. It may be noted that last year (see Journal, N.S. xiv. p. 420) Lagos repealed a similar Ordinance passed the previous year.

Lunatics.—Power is taken for the Supreme Court to order the removal of lunatics, whether so found or not, to the United Kingdom. The Ordinance indicates that there is no lunatic asylum in the Colony.

2. GOLD COAST.

Ordinances passed—13.

Northern Territories.—As was pointed out in the Journal (N.S. xii. p. 401) the Colony has two dependencies: (1) the Northern Territories, which constitute a protectorate, and are legislated for by the Governor in Council; and (2) Ashanti, which is legislated for by the Governor alone.

Two Ordinances (Nos. 1 and 3) are passed for the Protectorate. The first is a flogging law of the modern form, the second brings the Protectorate within the provisions of the Brussels Act relating to the importation of arms and ammunition.

Native Chiefs.—Provision is made by No. 4 for the regularisation of the appointment and deposition of head and subordinate chiefs. The election and installation and deposition of chiefs according to native custom must be confirmed by writing under the hand of the Governor. Proof that native custom has been observed is furnished, if need be, by a report from the Secretary for Native Affairs. The Governor being satisfied that two chiefs have been deposed, in accordance with native custom, the Ordinance declares them to be lawfully deposed from their respective "stools."

It would seem that notwithstanding this declaration these chiefs (or one of them) stuck to their "stools," whereby the election and installation of their successors could not be proceeded with. In order to ease this constitutional deadlock a subsequent Ordinance (No. 11) was passed for the recovery of the detained "stools" with all the necessary weapons of notice "by drum, gong, or other native method," of enquiry by District Commissioner, search warrant, imprisonment, penalties, etc. The gravity of the situation can be recognised by every person of British race, for what article of "regalia" do we preserve with more religious care than the stool of Scotland?

Wine and Beer.—The only provision of No. 9, dealing with wine and beer licences, which may deserve a note is the section which enacts that if credit be given to any non-commissioned officer or private soldier or sailor, or any merchant seaman, or any policeman, in any larger sum than

5*s.* for wine and beer supplied to him, the seller is to have no legal remedy for the recovery of any part of the sum so credited.

Savings Banks.—Hitherto the Government Savings Banks have been a department of the Treasury. They are now by Ordinance No. 12 transferred to the Post Office.

Tariff.—The new tariff established by No. 13 appears to be a great improvement on those of other West African Colonies. There is a schedule of expressed duties, a schedule of exemptions, while all goods not mentioned in one or the other pay an *ad valorem* duty of 10 per cent. "Free-Fooders" may take exception to the duties of 1*s.* 6*d.* per cwt. on bread, 2*d.* per barrel on flour, and 1*s.* per cwt. on rice. The table of exemptions is well calculated to promote the industrial progress of the Colony.

3. LAGOS.

Ordinances passed—26.

Tariff.—Among the goods absolutely prohibited to be imported are now to be included Maria Theresa dollars (No. 1). Another Ordinance (No. 8) exempts from duty agricultural implements and machinery of all kinds; while a third (No. 18) exempts ships, launches with their tackle, etc.

Adulteration of Produce.—It is made an offence to sell or offer for sale palm kernels in quantities of over 7 lb. containing a greater proportion than 5 per cent. of shell or other foreign substance; and any consignments of palm kernels containing over 5 per cent. of shell or other foreign matter are prohibited to be exported (No. 7).

Legal Practitioners.—No person except a legal practitioner is permitted to prepare any legal conveyance for reward under penalties of fine or imprisonment; and every practitioner drawing a conveyance must endorse thereon his name and address. These provisions do not apply to public officers drawing conveyances in the ordinary course of their duty.

Lunatics.—An Ordinance for the removal of lunatics (No. 12) is similar to that passed at the Gambia.

Protectorate.—Part of the Lagos Protectorate is occupied by the Egba nation, whose chief is called the Alake. During recent years trade and commerce "have vastly increased in Egba land, and large numbers of British subjects and others have settled there." Formerly Egba law was sufficient, but now the usual difficulties have arisen; and accordingly the Governor and the Alake have arrived at a *modus vivendi*, to which effect is given by No. 14, for a period of twenty years. The Lagos Supreme Court is to have jurisdiction (*a*) in all cases of murder and manslaughter; (*b*) in all other indictable offences committed by other than Egba natives; (*c*) in all civil cases where one or both parties are not Egba natives and the matter in dispute is over £50 in value; (*d*) in administration of property of persons

not being Egba natives. There is also to be a "mixed Court," the president of which is to be appointed by the Governor or the Supreme Court (it is not quite clear), the other two members being appointed by the Egba Council. This mixed Court is to have jurisdiction in cases of non-indictable offences committed by non-natives, and in civil cases under £50 in value. The agreement records the understanding that the indictable offences, in respect of which jurisdiction is ceded, must be tried by a judge of the Supreme Court sitting with assessors.

Colonial Loans.—Ordinance No. 22 appears to be a law in model form setting forth the terms and conditions under which loans are to be raised by the Colony by way of inscribed stock. The next (No. 23) provides for the raising of £2,000,000 by inscribed stock. Part of this (nearly £800,000) has been already borrowed, and the remainder is now to be borrowed for railway purposes.

Agricultural Union.—The Union now established consists of a Central Council of Agriculture, with branch societies for the districts. The Central Council numbers twenty members under the presidency of the Governor. The objects are "the general advancement of all branches of agriculture and the improvement of all kinds of live stock in the territory."

4. SIERRA LEONE.

Ordinances passed—18.

Traffic Regulation.—Power is taken by No. 1 for the Governor in Council to make regulations for traffic in streets which are apt to become crowded or congested with traffic.

Post Office.—Five Post Office Ordinances are repealed and re-enacted in a Consolidation Act (No. 7), which extends to the Protectorate as well as the Colony.

Summary Ejectment.—A procedure for summary ejectment of tenants of small holdings, refusing to quit on determination of their tenancies is provided by No. 9. It applies only to tenancies at will or on sufferance, or for a term not exceeding three years, or at a rent not exceeding £12 a year. The landlord gives the tenant notice under the Ordinance, then takes out a summons before a magistrate. At the hearing proof must be given of the tenancy and its determination, the service of the notice, and the non-compliance. There is an appeal to the Supreme Court.

Military Service.—Provision is made by No. 10 for the enlistment of a native "West Africa Regiment." It is to be liable for service in any part of the world, but may not be employed beyond the Colony and Protectorate without the consent of the Secretary of State for War. The regulations for enlistment, as to the power of the commanding officer, training, arms, clothing, and other matters for promoting the discipline and

efficiency of the regiment are to be made by the Secretary for War; and the Army Act is to apply to the force, subject to the provisions of the Ordinance.

The regiment now to be raised is, as will be seen, a purely military force, and in addition to the semi-military police force regulated by the Ordinance No. 22 of 1901, under the name of the "West Africa Frontier Force." This last-mentioned Ordinance is itself amended by Ordinance No. 12 of the same session.

Lunatics.—Ordinance No. 13 is similar to those mentioned under Gambia and Lagos.

Supreme Court.—A general consolidation of all the Ordinances relating to the Supreme Court and its jurisdiction is made by No. 14. No less than twenty-six Ordinances dating from 1851 are repealed and re-enacted in a more succinct form.

5. ASHANTI.

Ordinances passed—3.

These Ordinances merely amend previous legislation in small details.

6. NORTHERN NIGERIA.

Proclamations[1] passed—30.

Land Revenue Tax.—Considerable importance must be attached to the first steps in taxation in new territories: frequently, indeed, *tout dépend du premier pas.* Sir F. Lugard states that the law now passed is in consonance with native custom and is acquiesced in by the chiefs and people.[2]

The principal provisions are as follows: (1) Every chief has to pay to the Resident of the province one quarter of the amount received by him during the preceding twelve months in respect of tribute, tax, or rent arising out of any land; (2) every community has to pay to the Resident a sum equal to one-tenth of the annual value of the lands occupied or enjoyed by them in the province; (3) the High Commissioner may wholly or partially exempt any chief or community from the tax, and, subject to the approval of the Secretary of State, may from time to time increase the proportion payable.

For the purpose of carrying the law into effect, the Resident has to make an assessment of the annual value of all lands in respect of which

[1] Although the Nigerias are not yet technically Colonies, it may be suggested, if there be no cogent reason to the contrary, that the laws of these Protectorates should be denominated "Ordinances," and that the term "Proclamation" should be reserved for the purposes to which it is elsewhere applied

[2] See p. 48.

tributes and rents are paid to chiefs, and which are occupied and enjoyed by communities in his province. The principle on which the assessment is to based is "the amount of produce or profit which can be annually obtained from, and of the live stock which can be annually raised and supported on, such land by a person cultivating and using the same in the manner and up to the average standard of cultivation and use prevailing in the neighbourhood." Any chief or community may appeal to the Commissioner against the assessment. There are penalties for failure to disclose information, etc. And finally the Commissioner may make rules and, *inter alia*, he may fix the proper amount to be contributed by individual members or groups of communities, and he may fix any deductions proper to be made in their assessments by the Residents.

Statute Law Revision.—Northern Nigeria has not yet completed its first five years of life as a separate Government, and yet it very properly sets its house in order by preparing a collected edition of its laws. The Proclamation (No. 6) is of the type now usual in Crown Colonies. The work is put in the hands of the Chief Justice as Commissioner, who has editorial power to introduce small amendments of form, etc. The edition will show the Imperial statutes in force in the Protectorate, and also the Orders in Council and rules made while the territory was under the Foreign Office, and will be provided with an index. When approved by the Commissioner the volume will be recognised in all Courts as the "sole and only proper Statute-book of the Protectorate" up to the date of the last Proclamation included in it.

Tariff.—The new Tariff Law (No. 20) is of the normal West African type, with a table of special duties, a table of exemptions, and a duty of 10 per cent. on all other goods. But the Proclamation shows the following variations from the type: the duties are low compared with other Colonies—*e.g.* Gold Coast, whose new tariff law is noted above—and all goods, except salt, imported from Southern Nigeria or Lagos are free. Lagos and the Nigerias have a customs convention.

There seems to be a little slip in the exemption list. There is a total exemption of "books, newspapers, and printed matter," while lower down we find "educational apparatus, books . . . for the use of educational establishments when certified . . . to be solely intended for educational purposes."

Traders' Licences.—Traders are divided into three classes for licensing purposes (No. 21)—*i.e.* first and second class station-holders, and shopkeepers. The station-holders are distinguished by very definite measurements of their premises and buildings and with regard to their propinquity to railway stations. Shopkeepers are the minor fry. The annual licences cost £20 for a first-class and £10 for a second-class station-holder, and £5 for a shopkeeper.

Hawkers and Caravans.—A new law (No. 24) is passed apparently in

substitution for the law of 1903 noted in our last Review (Journal, xiv. p. 423), although there is no express repeal. The leading provisions are the same, viz. that every caravan has to pay a toll of 5 per cent. *ad valorem* on the merchandise carried, in each province traversed, but no caravan is to be called upon to pay more than an aggregate tax of 15 per cent. The tax is levied in consideration of the protection afforded by the Government on certain roads, and the law requires that the caravans should make use of those roads only.

Cantonments.—Somewhat elaborate provisions are made (No. 28) for the creation, constitution, and government of cantonments, which are to be under an officer called the cantonment magistrate. All the residents other than Government officials must be licensed and registered. In other respects the law is similar to a local government Act in England, with its provisions as to streets, sanitation, etc.

7. SOUTHERN NIGERIA.

Proclamations passed—7.

Diseases Prevention.—When it is known that any infectious or contagious disease prevails at any place, the High Commissioner may declare it to be an "infected place." He may make such rules as he thinks fit for preventing the spread of disease from infected places, and they may be kept in strict quarantine (No. 4).

Foreign Deserters.—We have here a case of reciprocity legislation. Deserters from foreign ships (not being slaves) will be apprehended and given up on application of the consular officer of the country to which the ship belongs, if it is shown to the satisfaction of the High Commissioner that due facilities are given in that country for the surrender of deserters from British ships.

Minor Legislation.—The Proclamations do not show further matter of general interest, but *The Government Gazette* contains some interesting illustrations of good methods in dealing with new peoples and unexplored territories. We have first a circular exhorting the district officers to keep carefully noted up the "Intelligence Book," in which each is to record for the benefit of his successors and the Government the information he is able to collect from day to day. Comprised in it will be notes as to population of towns and villages, geography of the district (with maps), languages, etc. Copies of maps are also to be sent to headquarters, chiefly, we presume, for military purposes.

Next, we find excellent rules by a Native Council with regard to the proof of debts, where the debt is not claimed until after the death of the debtor. The creditor must give to the Court a reasonable explanation why

the payment was not exacted during the debtor's lifetime. If it appears that the creditor did not exact payment "because he wished the debtor to get so largely in his debt that he should eventually be able to claim all the debtor's property," the Court will not recognise the claim.

Lastly we have regulations for elephant hunting. A licence for six months costs £5; a royalty of 25 per cent. on the ivory is payable to Government, and the killing of every elephant must be reported to the district officer.

Cowries.—As is well known, cowries have been for a long time a principal currency in this part of Africa. The concurrent use of these shells with coin must necessarily give rise to much confusion in market transactions. The Government has now issued a Proclamation (No. 6) prohibiting the importation of cowries, with a proviso authorising their use as currency in transactions between the inhabitants of the Nigerias and Lagos.

VII. EAST AND CENTRAL AFRICA.

[*Contributed by* Albert Gray, Esq., K.C.]

The legislation of the three great Protectorates, British Central Africa, East Africa, and Uganda, has not been hitherto reviewed in the Journal, owing to the system of government which prevailed down to 1902. Previously those vast territories were administered by the Foreign Office under Orders in Council which purported to comprise all the major law needful in their respective circumstances. Minor legislation was effected by Regulations approved by the Secretary of State. In the course of the development, however, larger measures of administrative law came to be required, such as those relating to the post office, administration of justice, sanitation, etc., for which the procedure by Order in Council was too cumbrous and that by Regulation not sufficiently dignified. A new departure was therefore taken in 1902, when by almost identical Orders in Council the Commissioners of the respective Protectorates were authorised to pass Ordinances on the colonial plan, subject to disallowance by the Secretary of State. The way was thus paved for the transfer of jurisdiction from the Foreign Office to the Colonial Office. The administration of British Central Africa was handed over on April 1, 1904, that of East Africa and Uganda (as well as Somaliland) on April 1, 1905.

Another matter requires to be noted. In the earlier days of the Protectorates, an appeal lay from the highest Court in British Central

Africa to the Cape, and from that of East Africa to Bombay.[1] It was considered advisable to provide some Court of intermediate appeal between the High Courts of the Protectorates and the Privy Council. Such a Court is provided by the East Africa Protectorates Order in Council, 1902. The members of the Court of Appeal are the judges of the Courts of Zanzibar, East Africa, Uganda, and British Central Africa. The chief seat of the Court is at Zanzibar, but it may sit in any of the Protectorates; three judges form a quorum, except in cases to be provided for by Rules of Court.

1. BRITISH CENTRAL AFRICA.

Ordinances passed—6.

Appeals from High Court.—Ordinance No. 1 sets forth the conditions of appeals in criminal and civil cases to the Protectorates Court of Appeal. In criminal cases there is an appeal on matter of either fact or law. The Commissioner may himself appeal from an original or appellate order of acquittal pronounced by the High Court. The Appeal Court may dismiss the appeal or, in case of an appeal against acquittal, it may reverse the order and direct further enquiry to be made, or that the accused be retried, or find him guilty and pass sentence. In an appeal from a conviction it may reverse, alter, or reduce, but not enhance the nature of the sentence. The power entrusted to a Court which has not heard the evidence to convict, on appeal from a Court which has acquitted after hearing the evidence, is one that will require to be very carefully exercised. In civil cases there is an appeal as of right in cases where the value of the subject-matter exceeds £70, and in other cases by leave.

Registration.—A registration of births and deaths is provided for by No. 2, but registration is in the first instance compulsory only in the case of Europeans; as to natives and others the Commissioner is authorised to make a compulsory order applicable to particular towns, districts, or tribes.

Native Labour.—The conditions of the engagement of native labourers for periods exceeding one month are enacted in No. 4, which also makes useful provisions as to the care and medical treatment of the labourers, and for the recruiting of natives for service outside the Protectorate.

Native Locations.—Every landowner in certain specified districts is obliged if so directed by the Commissioner to set aside as a native location

[1] Partly owing to the large influx of Indian immigrants and partly to other causes, the Indian Codes and other Indian laws were brought into force in East Africa in the earlier years of administration. The law being mostly Indian, an appeal to the High Court at Bombay was provided for, but was seldom if ever made use of. The appeal from British Central Africa to the Cape, from a Court administering English to one administering Roman-Dutch law, was far from satisfactory.

an area not exceeding one-tenth of any undeveloped land in his possession. The location may be selected by the Commissioner in favourable situations. The land comprised in the location is "vested in the male taxpaying heads of families for the time being in occupation of the same as joint tenants upon a lease for ever."

Alcoholic Liquor.—There is a stringent law with respect to liquor (No. 6). Such liquor may only be imported for the use of non-natives, and in accordance with a licence. Imported spirits are liable to a duty of 12*s.* per gallon; wines, beer, etc., to a duty of 10 per cent. *ad valorem*. The manufacture of distilled spirit within the Protectorate is prohibited. A licence is required for the sale of spirits within the Protectorate. As regards natives, spirits must not be given to them except for medicinal purposes, and any spirits found in the hands of a native may be seized.

2. EAST AFRICA.

Ordinances passed—15.

Unsettled Districts.—An Ordinance of 1902 made provision for the administration of justice in "special districts." No. 1 of 1904 now provides that where the Commissioner is satisfied that any native dwelling in a special district is disaffected to the Government, or is conducting himself so as to be dangerous to peace and good government, he may order him to be taken to and interned in another district, or to remove himself from the Protectorate.

Coffee Disease.—A permission is required to introduce coffee-seeds or plants from India, Ceylon, the Straits, Dutch East Indies, Mauritius, Zanzibar, Natal, German East Africa, or the Central American States, and proof is then required that the seeds or plants have come from non-infected places (No. 2).

Marriage Law.—The deceased wife's sister has had a two years' period of grace in East Africa. The Marriage Ordinance of 1902, following many colonial laws, authorised marriage between a man and the sister or niece of his deceased wife. By an amending Ordinance of 1904 (No. 3) that provision is repealed, with a saving for any marriages which may have been celebrated in the interval. The origin of the amending Ordinance may be traced to some observations made in Parliament on the law of 1902. *Varium et mutabile* may indeed be said not only of woman but also of man's legislation concerning her.

The Native Christian Marriage Ordinance (No. 9) provides, in the case of marriages between persons both of whom are natives and Christians, a somewhat simpler procedure than that provided by the law of 1902.

Jurisdiction in divorce is confined to the High Court (No. 12). The

petitioner must either be a professing Christian or have been married under the marriage laws of East Africa, Uganda, or British Central Africa, and must be resident in the Protectorate at the time of presenting the petition. Divorce can be granted only where the marriage has been solemnised in "Africa," which includes only the said three Protectorates, Zanzibar, Somaliland, and the German, Italian, or Portuguese possessions on the East Coast, or where the adultery or other crime has been committed in "Africa," or where the husband has since the marriage adopted some form of religion other than Christianity. The Ordinance is a carefully drawn measure on the model of the English Divorce Acts, adapted to the circumstances.

Tariff.—There is a general import duty of 10 per cent *ad valorem*. Plants and seeds, live stock (for breeding purposes), coal, books, bullion, agricultural implements, railway material, etc., are exempted, while liquors pay the duty prescribed by the Liquor Ordinance of 1902. There are also some export duties—viz. 30 per cent. on cloves, 15 per cent. on ivory and gum copal, 10 per cent. on rubber, borities, hides, rhinoceros horn and teeth, tortoise-shell, chillies, and ostrich feathers, 5 per cent. on ebony and other fine woods and on cowries and other sea-shells (No. 4).

A subsequent Ordinance (No. 8) provides for the case of contracts made before the new Tariff Law for the sale of goods affected by it. Where there is no special stipulation in the contract, the new or enhanced duty falls on the purchaser, while he gets the benefit of any reduction or remission.

Trading Licences.—The Commissioner may proclaim districts wherein trading by unlicensed persons is forbidden. Elsewhere the requirement of a licence is discontinued (No. 5).

Registration of Births and Deaths.—No. 7 is an Ordinance on similar lines to that of the British Central Africa law described above.

Game.—Further provisions are made by No. 11 in amendment of the Game Regulations of 1900. They seem to tend in the direction of relaxation rather than of increased stringency. Landowners may take out a licence at 45 rupees, which authorises him to kill scheduled animals without limitation. A landowner may take out a "settler's licence" in addition to his "landowner's," and in that case the animals killed under the latter are not reckoned for the purposes of the settler's. It seems proper that a person may kill wild animals found trespassing upon his crops, and also proper that in such case the horns, skin, tusks, etc., should be handed over to Government. The third and fourth schedules of animals annexed to the Regulations of 1900 are revised and amended by this Ordinance.

3. UGANDA.

Ordinances passed—18.

Game.—The Commissioner takes power by No. 1 to remove the name of any animal from the schedules to the Game Regulations of 1900, either as respects the whole Protectorate or any district. By a subsequent proclamation under this Ordinance, hippopotami are deprived of protection in certain districts.

Provision is made by No. 9 for the validity of East Africa gun licences in Uganda. They must, however, be endorsed by an authorised officer in Uganda.

The Regulations of 1900 are amended by No. 10. The possession of elephant cow ivory is an offence, unless the possessor proves that it was acquired otherwise than in breach of the Regulations. Provision is also made for the sale of ostrich eggs, and the heads, horns, etc., of animals where they form part of a deceased person's estate, or where they have been confiscated.

European officers of the Soudan Government are to be deemed public officers of the Uganda Government for game purposes (No. 12).

Marriage.—Marriage with deceased wife's sister was permitted by the Marriage Ordinance of 1902. It is now prohibited (No. 2), as in East Africa.

A Divorce Law similar to that passed in East Africa has been granted to Uganda (No. 15).

Registration of Documents.—All documents affecting interests in land are required to be registered: others may be registered at the option of the holder. The former must be registered within two months after the commencement of the Ordinance, or after execution, or in case of those executed abroad, within two months after arrival in the Protectorate. If default is made, the person in whose favour the document is made is liable to a fine not exceeding ten times the registration fee (with a maximum of 500 rupees). The Ordinance is founded upon the East Africa Regulations of 1901.

Unsettled Districts.—The Commissioner may declare areas to be "closed districts" and thereupon no person other than natives, public officers, and licensed persons may enter them (No. 4). If a licensee gets into trouble in a closed district, he may be called upon to pay the costs of the Government in extricating him.

Trading Licences.—Ordinance No. 5 is similar to the law noted under the head of East Africa.

Tariff.—The law is by No. 7 made similar to that of East Africa as noted above.

Registration of Births and Deaths.—Ordinance No. 13 is similar to the laws of East Africa and British Central Africa on this subject.

VIII. SOUTH ATLANTIC.

1. THE FALKLAND ISLANDS.

[*Contributed by* EDWARD MANSON, ESQ.]

Ordinances passed—9.

Flogging (No. 1).—This regulates sentences of flogging. Twenty-four strokes is to be the maximum number for adult offenders, twelve for juvenile offenders: and this is to be so though the conviction is for two or more offences. The same maximum applies to flogging for breach of prison or other regulations. The instrument to be used must be one approved by the Governor. No female is to be sentenced to flogging.

Exportation of Material of War (No. 2).—The Governor may under this Ordinance, whenever he deems it expedient, by Proclamation prohibit the carrying coast-wards or the exportation to any country or place named in the Proclamation of any arms, ammunition, or military or naval stores, or any article which may be used for such purpose, comprised in a schedule annexed to the Ordinance.

Liquor Licences (No. 3).—This is in furtherance of the policy of interdiction of the sale of drink to inebriates. It imposes a penalty of £5 on any prohibited or "black-listed" person being in any place where liquor is sold by retail, and on any holder of a retail liquor licence who suffers such prohibited person to be on the premises or supplies him with drink. The magistrate may dismiss the charge where the contravention has not been wilful or the licence holder has used every effort to prevent such prohibited person remaining on the premises.

Supply.—Nos. 9 and 4 provide for supply and supplementary expenditure.

Trespass by Animals (No. 5).—Any animal found straying or trespassing in the town of Stanley or on any Crown waste land or on any private fenced land may be put in a public pound. The pound-keeper is to provide a sufficiency of food and water, and the owner of an animal must previously to its release pay the pound-keeper 3*s.* in respect of the first twenty-four hours and 1*s.* for every subsequent twenty-four hours. An impounded animal may after six days be sold by order of any justice. Swine, sheep, or goats found trespassing on fenced town land may be killed by the occupier. Two shillings is to be the liquidated damages for any animal trespassing.

There is a penalty of £5 for negligence or ill usage in driving any animal so as to cause mischief to it or wantonly pelting or hurting any animal or worrying it with a dog. A penalty is also imposed for wilfully leaving open any gate leading to or from the common.

Conveyancing and Title to Land (No. 6).—This Ordinance, which is directed to the simplification of conveyancing, provides some short forms of conveyance, mortgage, transfer of mortgage and lease carrying respectively certain implied covenants in the manner of our own Conveyancing Act, 1881.

Deeds other than Crown grants or leases are to be registered at length in the Registrar-General's office. One witness is made sufficient for a deed.

Any person lawfully entitled may petition to be registered as the owner in fee of any land. The petition is to be published and copies given to all persons whom the Court may think interested in opposition. On the hearing the Chief Justice, if satisfied as to the petitioner's claim, may make a *decree nisi* for the issue of a title, but such *decree nisi* is not to be made absolute until the expiration of one year from the pronouncing of it. In the meanwhile any person may show cause against the decree being made absolute. When the *decree nisi* is made absolute, the Registrar-General prepares a deed of conveyance. This is countersigned by the Chief Justice and, a copy being entered in the Deed Book, the title is then indefeasible.

Pilots (No. 7).—This merely removes a doubt occasioned by the Pilot Ordinance, 1902, and recognises as pilots all persons who at the time when that Ordinance came into operation held valid licences as pilots.

Seal Fishery (No. 8).—Whenever any vessel is found in colonial waters and there is good cause to suspect that the person in charge has committed any offence against the Seal Fishery Ordinance, 1899, the Government may seize such person and detain the vessel until security has been given.

2. ST. HELENA.

[*Contributed by* EDWARD MANSON, ESQ.]

Ordinances passed—7.

Marine Trading (No. 1).—This Ordinance sanctions—subject to some necessary restrictions—trading with vessels passing the island. The Harbour Master is authorised to grant free of charge to any person of good character who can read and write a licence to trade as a marine trader. Armed with this licence, the licensee may board any passing vessel except mail and other steamers, or coolie or emigrant ships or vessels from the Cape or West Africa. These are not to be boarded—under heavy penalties—till pratique has been granted and the white flag hoisted.

A licensee convicted of fraud or theft or of wilfully conveying prostitutes to any vessel, or of any offence against the Ordinance, is liable to have his licence forfeited. Certain articles, such as wearing apparel, bedding, sacks, shoddy, raw silks and wool are not to be taken in payment.

Statute Law Revision (No. 2).—This repeals a number of obsolete Ordinances, Orders in Council, and Proclamations.

Drainage (Nos. 3, 6).—These provide for drainage works for Jamestown.

Peach Fly (No. 7).—The peach fly (*Ceratitis citriperda*) is very destructive to peaches, apricots, loquats, rose-apples, figs, mangoes, guavas, oranges, pears, and coffee. This Ordinance is a determined effort to exterminate the pest. Any person failing to destroy a maggot-infested fruit or berry, or offering such for sale or importing fruit from South Africa, Mauritius, the Cape Verde Islands, or Malta, is liable to a penalty of 10*s*. Inspectors may be appointed to prohibit the importation of green fruit from any of the above places.

IX. NORTH AMERICAN COLONIES.

1. DOMINION OF CANADA.

[*Contributed by* J. A. Simon, Esq., M.P.]

Acts passed—Public General, 42; Local and Private, 100.

Criminal Code.—Nos. 7, 8, and 9 make small amendments in the Criminal Code, 1892.

Customs Tariff.—No. 11 amends the Customs Tariff, 1897.

Inspection of Grain.—No. 15 is an Act of ninety-three sections providing for the inspection and grading of grain by Government officials.

Militia.—No. 23 is the longest and most important Act of the year, and is entitled "An Act respecting the Militia and Defence of Canada." It repeals Acts of 1898 and 1900 dealing with the subject, and establishes (s. 5) a Minister of Militia and Defence, who is made responsible for the administration of Militia affairs and of fortifications, ordnance, ammunition, arms, armouries, stores, munitions, and habiliments of war belonging to Canada, including the initiative in all matters involving the expenditure of money. By s. 11 all the male inhabitants of Canada, of the age of eighteen and upwards and under sixty, not exempt or disqualified by law, and being British subjects, are liable to serve in the Militia; and the Governor-General may require all the male inhabitants of Canada, capable of bearing arms, to serve in the case of a *levée en masse*. S. 12 exempts certain classes of persons—*e.g.* judges, clergymen, telegraph and revenue clerks, prison warders, pilots, "the only son of a widow, being her only support," and "persons who, from the doctrines of their religion, are averse to bearing arms or rendering personal military service." S. 15 divides those liable to serve into four classes: (1) those between eighteen and thirty who are unmarried, or widowers without children; (2) those between thirty and forty-five who are unmarried, or widowers without children; (3) those between

eighteen and forty-five who are married, or widowers with children; (4) those between forty-five and sixty; and provides that the male population shall be called on to serve in this order. The period of service in time of peace for the active Militia (corps raised by voluntary enlistment or ballot) is three years (s. 17). The permanent force is to consist of such permanently embodied corps, not exceeding 2,000 men, enrolled for continuous service, as are from time to time authorised by the Governor in Council (s. 24). If enough men do not volunteer, the quota is made up by ballot, but not more than one son from the same family household is liable to be chosen (s. 27). Subsequent sections deal with the appointment of officers, with arms and equipment, with pay and allowances, rifle ranges, rifle clubs and cadet corps, billeting, transport, courts-martial, and with the calling out of the Militia to aid the civil power in the event of disturbances.

Bounties.—No. 28 provides for the payment of bounties of $1\frac{1}{2}$ per cent. per imperial gallon on crude petroleum produced from wells in Canada.

Railway Companies' Liability to their Servants.—No. 31 enacts that no railway company within the jurisdiction or legislative control of the Dominion Parliament shall be relieved from liability for damages for personal injury to any servant of the company by reason of any notice, condition, rule, by-law, release, or contribution to benefit funds—in other words, that no railway company is to contract out of its liability to its servants for personal injury. S. 2 of the Act provides that the question whether the Dominion Parliament is competent to enact this law is to be referred by the Governor in Council to the Supreme Court of Canada for its decision, and is to come into force only after its validity has thus been determined.

Shipping Casualties.—No. 37 amends the Act of 1901 of this name.

Temperance.—No. 41 amends the Canada Temperance Act.

2. BRITISH COLUMBIA.

[*Contributed by* J. A. Simon, Esq., M.P.]

The legislation for 1904 has already appeared.

3. MANITOBA.[1]

[*Contributed by* H. Stuart Moore, Esq.]

Acts passed—91.

Elections.—No. 13 amends the Manitoba Election Act with respect to the revision of the list of voters, the duties of registration clerks, and the

[1] The first session of the eleventh Legislature commenced on January 7 and closed on February 8, 1904. Of the Acts passed, 64 are classed as Public and the residue as private. In the United Kingdom, 18 of the public Acts would be classed as local and personal.

maintenance of order at registration sittings. The revision of the list of voters is performed before a board composed of judges of the County Courts.

Game Laws.—No. 18 makes it an offence under the Game Protection Act to export any of the birds or animals mentioned in that Act without the leave of the Minister of Agriculture.

Insurance.—No. 27 amends the Manitoba Insurance Act. Insurance against fire cannot be made with any company not licensed under that Act unless a sum equal to 50 per cent. of the premium be paid to the Provincial Treasurer. If, however, the licensed companies refuse the risk, any other company may take it if 1 per cent. of the premium is paid to the Provincial Treasurer.

Temperance Reform.—No. 31 amends the Liquor Licence Act. Under the principal Act a person may be interdicted from obtaining spirituous liquors. By the amending Act an interdicted person, if found intoxicated, shall, if required by any person, give full information as to the person or persons from whom he obtained the liquor, and as to the time and place when and where he so obtained it. If he refuses or neglects to do so, he is liable to a fine of not less than $10 or more than $50, or to one month's imprisonment. His inability to answer and to give the required particulars is apparently not provided for.

Municipal Government.—Nos. 35, 36, and 37 enact various amendments to the Municipal Act.

Safety of Public Places of Amusement.—No. 45 amends the Public Buildings Act as to ventilation, lighting, and fire appliances in theatres, opera-houses, and music-halls. In future opera-houses and theatres intended to accommodate an audience of 600 persons must have the floor of the auditorium not more than 12 feet above the level of the adjoining street.

Education.—No. 47 amends the Public Schools Act. In certain districts children who reside more than one mile from the school must be conveyed to and fro at the expense of the school trustees.

Tuberculosis.—No. 53 provides for the erection and maintenance of a State sanatorium for consumptives. Inmates who are in a position to pay, or who have persons liable to maintain them, must do so. Persons unable to pay can be admitted on the request of the mayor or reeve of a rural municipality, in which case the municipality is liable for the charge.

Revised Statutes.—No. 57 corrects numerous printer's errors in the edition of the Revised Statutes of 1902.

Appropriation.—Nos. 59 and 60 provide $1,849,740.05 for the civil government of the Province up to December 31, 1904.

Trusts.—No. 62 amends the Manitoba Trustee Act and provides that in the case of the supposed death of a person who afterwards appears, that person is entitled to recover from the administrator the residue of the estate remaining in his hands, and he has a remedy against the recipients

from the administrator. Similar provisions apply in the case of intestacies and wills. Executors and administrators are, however, entitled to retain out of the estate their proper costs and charges of its administration.

4. NEW BRUNSWICK.[1]

[*Contributed by* H. Stuart Moore, Esq.]

Acts passed--88.

Appropriation.—Nos. 1 and 2 provide $352,402 for the expenses of the government of the Province and the upkeep of roads and bridges and other public works until October 31, 1904.

Highways.—No. 6 repeals Nos. 184 and 185 of the Consolidated Statutes relating to highways. It abolishes the distinction between great roads and by-roads and passes the soil and freehold of every highway existing at the time of this Act to His Majesty. In future roads are to be 4 rods wide. The control and management of the highways is placed in the hands of superintendents, who also have power on the application of at least five freeholders to lay out, widen, alter, or extend any highway, if such a course is desirable in the public interest. Compensation must be made for lands thus occupied, and provision is made for the closing of any highway. Roads in certain cases may be for use only in the months of from December to April.

The upkeep of the highway is met by a poll tax of $1 on every male resident between the ages of twenty-one and sixty, and an assessment of 12 cents or every $100 of real and personal property and income of every person and corporation. In winter the inhabitants are liable to be called out to clear the roads of snow.

After two years from the passing of this Act no action can be brought to recover the price of any waggon unless the width of the tyres of the wheels complies with the requirements of the Act—that is, the tyres must not be less than $2\frac{1}{2}$ or 4 inches in width, according to the character of the waggon.

Amendment of a Will.—No. 11 amends the will of the Hon. John Boyd, who died without heirs or next of kin, leaving by his will his property to his wife for life. The Act declares the will to be read as if the words "for life" were omitted, and the estate was to be freed of any claim or interest on the part of the Crown.

Dairies.—No. 24 regulates the manufacture, sale, and export of milk, cream, cheese, or other products of milk or cream. Inspectors under

[1] The session commenced on March 3, 1904, and closed on April 20. Of the Acts passed, 32 are classed as public, but in the United Kingdom 6 of these would be classed as local and personal.

the Act can, if necessary, forbid the use of any dairy utensil or anything used for the conveyance of dairy produce, or order them to be forthwith cleaned and disinfected. They can also condemn any stock and forbid the removal of any dairy produce. Dairy produce cannot be exported unless it is in all respects sound and has been duly inspected. Moreover, the ship or car in which it is shipped must be in a fit condition to receive it and be properly equipped for its safe carriage in good condition throughout the whole of the voyage.

The Tercentenary.—No. 31 empowers the Lieutenant-Governor to expend $2,000 in aid of the Tercentenary celebration of the landing of Champlain on the shores of New Brunswick.

Amending Acts.—The other public Acts of this session deal with small amendments of previous legislation.

5. NORTH-WEST TERRITORIES.[1]

[*Contributed by* H. Stuart Moore, Esq.]

Ordinances passed—35.

Appropriation.—No. 1 provides $194,300 for the government of the Province for the year 1904, and $1,312,815 for the year 1905.

Master and Servant.—No. 3 enacts that every engagement of personal services for a period exceeding one year must be in writing and signed by the contracting parties. Misconduct of a servant is punishable by a fine of $30 or imprisonment for one month in default of payment. The master may be summoned before the justices for non-payment of wages or for improper dismissal of the servant. He can be ordered to pay the wages due, and in case of improper dismissal a sum equal to four weeks' wages. The Ordinance applies to contracts made both inside and outside the Province, and does not affect any civil or other remedies which the parties may have.

Local Government.—No. 8 amends the Ordinance respecting local government districts in various respects. It also enacts that to ensure the prompt payment of taxes, a ratepayer who pays his taxes before a certain date in each year is entitled to a rebate of 10 per cent. thereof.

Liquor Traffic.—No 14 amends the Liquor Licence Ordinance on various points. Licensed hotels have to be provided with suitable fire-escapes. Inspectors appointed under the Ordinance on the application of the husband or wife, the father, mother, brother, or sister of such husband or wife, or the father, mother, brother, curator, guardian, or employer

[1] The third session of the fifth Legislative Assembly began on September 22, 1904, and closed on October 8. Of the Ordinances passed, 21 would in the United Kingdom be classed as local and personal.

of any person who has contracted the habit of drinking to excess, or of that person himself, can interdict him from the use of intoxicating liquors for one year, under a penalty of $50.

Amending Ordinances.—The residue of the Ordinances for this session deal with small amendments of previous legislation.

6. PROVINCE OF ONTARIO.

[*Contributed by* JAMES S. HENDERSON, ESQ.]

Acts passed—107, of which 69 were Local or Private.

Legislative Assembly.—No. 2 removes certain disqualifications for election to the Legislative Assembly. It provides, *inter alia*, that sureties for public officers or contractors are not to be ineligible for election.

Election Law.—No. 3 provides that no person shall be appointed returning officer, deputy returning officer or poll clerk who has been found guilty of corrupt practices. It also imposes a penalty upon any deputy returning officer who wilfully omits either to initial the back of ballot papers or to prefix a number to the names in the list of voters. Election petitions must be presented within forty-five days after the polling.

Security by Public Officers.—No. 4 confirms certain Orders in Council respecting the security to be given by public officers.

Taxation of Railways.—No. 5 is the Supplementary Revenue Act. It imposes a heavier tax on railways. Railway companies owning, operating, or using a steam railway in the Province have to pay a tax of $30 per mile for one track, and $10 per mile for each additional track where the line consists of two or more tracks operated or used in any county. In unorganised territory the tax is less, being $20 per mile for one track, and $5 per mile for each additional track. Railway companies owning and operating lines not exceeding 150 miles in length from terminus to terminus are taxed on a still lower scale, viz. $15 per mile for one track, and $5 per mile for each additional track. Where a line is owned and worked by different companies, they are jointly and severally liable for the tax. In measuring the trackage of a railway for the purposes of the Act switches, spurs, or sidings are not to be included.

Statute Law Amendment.—No. 10 amends the law in various particulars:

Voters' Lists.—S. 1 makes certain alterations in the provisions of the Ontario Voters' Lists Act, as to the time for making up the lists in unorganised territory.

Elections.—S. 5 provides that where the seat of any member of the Legislative Assembly is vacated for any cause and a writ has not issued for the election of a new member within three months after the vacancy

has occurred, the Clerk of the Crown in Chancery is to issue the writ forthwith.

Estate Bills.—S. 6 constitutes the judges of the Supreme Court of Ontario *ex-officio* commissioners to report under the rules and orders of the Legislative Assembly in respect of estate bills, or petitions for estate bills, submitted to the Assembly.

Enquiries concerning Public Matters.—S. 7 amends the Act on this subject by taking away the right previously given to witnesses examined before commissioners appointed to enquire into public matters of refusing to answer questions which might render them liable to a criminal prosecution.

Public Works.—S. 8 enables questions as to amount of compensation to be referred to the county or district judge.

Niagara Falls Park.—S. 9 provides that any highway opened or widened as an approach to the park is not to be used or occupied as a stand for vehicles kept for hire, or by booths or stands for the sale of newspapers, photographs, refreshments, or the like.

County Courts.—S. 11 enables the judge of a county court to transfer to another county court an action which is not competent in his own, but is competent in the other court.

S. 13 allows an appeal as to costs to a Divisional Court in certain cases.

S. 14 enables the Divisional Court to extend the time for setting down appeals, etc.

Surrogate Courts.—S. 16 enables the Divisional Court to extend the time for appealing from these courts.

Jurors.—SS. 17 to 19 amend the Jurors Act in certain details.

Limitation of Actions.—S. 20 amends the law on this subject by providing that actions for penalties brought by any informer suing for himself alone, or for the Crown as well as himself, or by any person authorised to sue for the same, not being the person aggrieved, must be brought within one year after the cause of action arose.

Evidence.—S. 21 amends the Evidence Act by providing that a witness shall not be excused from answering any question which may tend to criminate him or expose him to a civil action, but if a witness is compelled to answer a question which may tend to criminate him, and which but for this section he could not have been compelled to answer, his answer is declared not to be receivable in evidence against him on the trial of any proceeding under any Act of the Legislature of Ontario.

Summary Convictions.—S. 22 repeals the provision of the Ontario Summary Convictions Act which prohibited the giving of time for the payment of fines, penalties, or costs, or allowing them to be paid by instalments.

Returns of Convictions and Fines.—S. 24 provides that the returns of convictions and fines by justices of the peace are to be posted up in the court-house and office of the clerk of the peace, and not, as formerly, published also in the newspapers.

Registration of Deeds.—SS. 30 and 31 amend the Registry Act in certain details—as to inspection of books in registry offices by a master or local master of titles, and as to investigations by inspectors.

S. 32 enables the Lieutenant-Governor in Council to direct that registrars shall cease to be engaged in any business which competes with any other business in the Registry Division under penalty of deprivation of office.

Assignments by Insolvents.—S. 33 enables a judge to appoint a new assignee in place of one who has died.

Master and Servant.—S. 38 repeals s. 14 of the Statute Law Amendment Act of 1901, which imposed a penalty in the case of a workman leaving his employment before repaying advances.

Marriage.—S. 39 amends the Marriage Act by legalising the solemnisation of marriages by elders of the church or congregation of religious people commonly called Farringdon Independent Church; and s. 40 validates marriages heretofore solemnised by such elders.

Lien on Horses and Vehicles.—S. 44 amends the Innkeepers Act by giving to every keeper of a livery stable or boarding stable a lien for his reasonable charges on horses boarded or vehicles left.

Railways.—S. 49 adds a section to the Railway Act of Ontario providing that a railway company purchasing or taking lands under compulsory powers is not to be entitled to any mines, ores, metals, coal, slate, mineral oils or other minerals (except such as are necessarily taken in the construction of the works) unless the same have been expressly purchased.

Public Libraries.—SS. 54-6 amend the Public Libraries Act in certain details, *inter alia* as to the amount of special rate that may be levied for the support of public libraries, and as to the use of libraries by non-residents.

Traction Engines.—S. 60 provides that before taking a traction engine over a bridge or culvert the person in charge shall lay down planks of sufficient width and thickness to protect the surface of the bridge from injury.

Motor Cars.—S. 70 amends the law as to these vehicles by requiring the payment of a registration fee by every resident owner of a motor vehicle and every non-resident owner whose motor is driven in the Province. Permits are to be issued which, with the number, are to be conspicuously exposed on the vehicle.

Telegraphs and Telephones.—S. 74 enacts that no telephone or telegraph company shall be deemed to have acquired or hereafter shall acquire any easement by prescription or otherwise in respect of wires or cables attached to or passing through or over private property, unless in cases where the company has obtained a grant from the owner of the property.

Sunday Working of Street Railways.—S. 79 prohibits under penalties the working of such railways on Sundays except for the purpose of keeping the track clear of snow or ice, or for the purpose of doing other work of necessity. This prohibition, however, is not to affect companies which

before April 1, 1897, regularly ran cars on Sundays, or companies authorised by charter to run them on Sundays, or the rights (if any) of the Toronto Railway Company to do so if sanctioned by a vote of the electors.

Judicature.—No. 11 is the Judicature Act. It deals with appeals from and the jurisdiction of Divisional Courts, and as to the jurisdiction of the Court of Appeal.

Justices of the Peace.—No. 13 is the Justices of the Peace Act. It enables certain fees to be taken by justices in respect of the hearing of cases. A penalty is imposed for charging excessive fees, and procedure is prescribed for complaints being made in respect of any excessive charge. Any action for penalties must be commenced within six months from the time when the cause of action occurred.

Road Companies.—No. 9 amends the General Road Companies Act. It deals with the tolls chargeable for thrashing or traction engines and water-carts. It further enables the authorities who may have leased toll roads to retake possession where the lessee refuses after notice to keep the road in efficient repair. New bridges over twenty feet in length can only be erected on any toll road after the plans and specifications have been duly approved by the Commissioner of Works.

Insurance.—No. 15 amends the Insurance Act. It requires applicants for the incorporation of a friendly society, which has its head office elsewhere than in Ontario, to show to the satisfaction of the Insurance Registrar that there is real and substantial reason and necessity for the society proposed to be incorporated, and that the granting of the application would not be contrary to law or to the public interest. The Act defines guarantee insurance as including fidelity insurance, title insurance, credit insurance, and contracts of suretyship generally. A guarantee company cannot undertake title or credit insurance unless expressly authorised by the letters patent of incorporation. The Act also deals with the premiums in mutual or cash-mutual insurance companies incorporated after June 1, 1904.

No. 16 is the Weather Insurance Act. It defines weather insurance as meaning and including the insurance of any kind of agricultural property (which is also defined) against loss or injury arising from such atmospheric disturbances, discharges, or conditions as the contract of insurance shall specify. The Act further provides a set of statutory conditions to be printed on every policy and which are to be binding on the insurer unless expressly varied, any such variation to be printed on the policy in conspicuous type and in ink of a different colour.

Loan Corporations.—No. 17 amends the Loan Corporations Act. It requires contracts of loan made by such corporations to be evidenced by a written instrument on which all the terms and conditions of the contract are clearly set out, including how the loan may be discharged. The contract is not to be affected by subsequent by-laws. Unregistered loan corporations are prohibited under penalties. A court of summary jurisdiction is empowered

to reform a contract for a loan of money not exceeding $200 where the loan has been induced by misrepresentation and the interest exceeds 10 per cent.

Aid to Railways.—Nos. 18-21 make grants in aid of certain railways, subject to certain conditions as to the rates to be charged, etc.

Municipalities.—No. 22 amends the Consolidated Municipalities Act, 1903. *Inter alia* it deals with the rearrangements of electoral divisions, elections, rates, municipal borrowing, the making of by-laws as to the situation of laundries and butchers' shops, and the closing of certain streets. It enables municipalities to grant to any person or company the right to place waste-paper boxes in streets; empowers constables to arrest without warrant pedlars who fail on demand to produce their licence. It enables grants to be made in aid of hospitals. Newspaper proprietors are not disqualified from being councillors by reason only of the fact that official advertisements of the council are inserted in such persons' newspapers.

Assessment.—No. 23 is the Assessment Act, an amending and consolidating statute of 229 sections. It declares what property is ratable and what exempt; provides for assessment returns, deals with the duties of assessors, etc.

No. 24, which is the Revision of Assessment Laws Act, makes certain further amendments on the same subject.

Statute Labour.—No. 25 is the Statute Labour Act, which consolidates the law on the subject. It specifies the persons exempt from the performance of statute labour or for a commutation thereof; empowers councils to abolish or reduce the tax; declares the ratio of service and commutation in case of persons assessed, etc.

Factories.—No. 26 is the Factories Act. It requires young girls and women employed in factories to wear, during working hours, their hair rolled or plaited and fastened securely to their heads, or confined in close-fitting caps or nets, so as to avoid contact with the machinery. Managers and others in charge of factories are required to see that employees are fully notified of this provision. Working hours are not to be later than 6.30 p.m. unless with a special permit from the factory inspector. Factory owners are required to provide separate sets of conveniences, with separate approaches to each set, for the use of male and female workers, the recognised standard being one closet for every twenty-five employees. Owners are responsible for remedying any nuisance from defective drains; and they must arrange for a supply of pure drinking water. Employers of factories must keep the same in sanitary condition. Factory inspectors may in their discretion require the provision of spittoons in factories, and may direct the use of mechanical means for preventing the inhalation of dust by employees. Elevators must be properly secured.

Noxious Weeds.—No. 27 is the Noxious Weeds Act. Owners or occupants of lands in a municipality are required to cut down and destroy at the proper time to prevent seeding all noxious weeds growing on any

highway, not being a toll-road, from the boundary of the land to the centre line of the road; a similar provision is made as to land in unorganised townships.

Game.—No. 28 is the Game Protection Act. It prescribes a close season for moose, reindeer, caribou, and capercailzie.

Education.—No. 29 amends the Education Department Act by providing for the apportionment of money for free text-books in rural districts.

No. 30 amends the Public Schools Act. It makes certain alterations in the administrative machinery. It further gives the member of a public school board who is assessed for the largest sum a second or casting vote in addition to his vote as member in case of a tie. Boards may make grants out of the school funds to superannuation funds for teachers. Where in any township it appears to the council that owing to the condition of the roads or other causes the public school in any district is during certain months inaccessible to any of the pupils, a second school may be established for such period as may be thought advisable.

No. 31 amends the High Schools Act. It empowers the collection of certain limited fees from parents to defray the cost of text-books and other school supplies.

No. 32 amends in certain details the Act as to Boards of Education in certain cities.

No. 33 also deals with Boards of Education. It empowers the setting up of such boards in towns, villages, and cities of less than 100,000 inhabitants—such boards consisting of an amalgamation of the education bodies—school boards, high school trustees, and boards of management of technical schools. The composition of such Boards of Education is prescribed, with the mode of election and term of office, etc.

No. 34 amends the Separate Schools Act by empowering the establishment of separate schools in rural sections.

No. 35 amends the Toronto University Act, 1901. Its most important provision is that which empowers the senate to make statutes providing for the cancellation of any degree conferred upon any person who has been convicted of an offence which, if committed in Canada, would be an indictable offence, or who has been guilty of any infamous or disgraceful conduct, or of conduct unbecoming a graduate of the University. The senate is further enabled to prescribe the mode of enquiring into and determining as to the guilt of such graduate.

Property of Religious Institutions.—No. 36 amends the Act on this subject by providing as to conveyances of property to trustees appointed by the Boards of the Methodist Church.

Houses of Refuge.—No. 37 is the Houses of Refuge Act. It deals with contracts for sewerage, water, and electric light supply in connection with these institutions.

Charity Aid.—No. 38 amends the Charity Aid Act in certain details.

7. PROVINCE OF QUEBEC.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed—Public, 36; Private and Local, 88.

Pawnbrokers (No. 1).—Pawnbrokers may sell pledges not redeemed within one year without the formality of a judgment.

Public Lands and Forests (No. 13).—This Act amends in a number of particulars the law as to the sale and management of public lands, woods, and forests.

Crown lands agents are bound to sell lands classified as suitable for cultivation to any *bonâ fide* settler who applies on the conditions and at the price fixed by the Lieutenant-Governor in Council, but the amount is not to exceed 200 acres.

Settlers obtaining a lot of land from the Crown for colonisation purposes are to furnish a declaration stating that they have fulfilled all the conditions set forth in the location ticket up to the date of the declaration. A sale may be cancelled for fraud. No person is to obtain letters patent from the Crown for more than 300 acres of land for colonisation purposes by means of transfers from the original purchaser from the Crown. No timber dues are to be exacted on any timber cut by settlers on lots regularly acquired by location ticket from the Crown where such timber is cut in good faith during clearing operations.

Mines (No. 16).—Timber of all kinds is reserved by law in favour of the Crown upon lands sold as mining lands in a territory which is not under licence to cut timber.

Dentists (No. 28).—This Act makes certain amendments in the constitution of the Board of Governors of the College of Dental Surgeons and the scheme of instruction in dentistry. Assessors from the members of the College are to attend the examinations.

Early Closing of Shops (No. 29).—The Early Closing Act of 1894 gave municipal councils power to make by-laws on the subject, but provided no penalty for infringement of any such by-law. Infringement is now punishable with a fine not exceeding $40, and in default imprisonment not exceeding two months.

Automobiles (No. 30).—In Quebec, as elsewhere, the licence of the automobilist has called for a legislative check. "Automobile" in the Act comprises "all vehicles moved by any power other than muscular force excepting railway and tramway cars, and motor vehicles running only on rails or railroads."

An automobile is not to be driven at a speed greater than six miles an hour within the limits of a city, town, or village; nor at a speed greater than fifteen miles an hour in any other municipality. Every person having

the control of an automobile is on the approach of any horse ridden or driven to so manœuvre the automobile as to take every reasonable precaution to prevent such horse being frightened and to safeguard the rider or driver; he must slacken speed, and if signalled by the lifting of the hand of the rider or driver he must not approach any nearer until the horse appears under control. Disobedience is punishable summarily by a fine not exceeding $20, or in default imprisonment not exceeding one month.

Joint Stock Companies (No. 33).—The same difficulty which led in England to the Companies (Alteration of Memorandum) Act, 1890, has occurred here, but the Quebec Act has a wider scope than the English Act. The Lieutenant-Governor may on petition grant a company supplementary letters patent conferring additional powers or authorising any modification or repeal of the existing powers.

A company is not to commence its operations or contract any obligation before 10 per cent. of its authorised capital has been subscribed and paid up.

Power is given to issue debentures and to secure their payment by hypothec. Such debentures, if registered, are given a privilege claim over all other debts of the company. Shares may be sub-divided.

Extra-Provincial Companies (No. 34).—No extra-provincial corporation (with certain exceptions) is to carry on business in the Province of Quebec unless a licence has been granted it, and to obtain this licence the corporation must (i) deposit in the office of the Provincial Secretary a copy of its charter, articles, or other deeds constituting the corporation; (ii) establish that it is so constituted as to carry out the obligations it may contract; (iii) deposit also a power of attorney constituting a chief agent in the Province to receive service; (iv) pay the fees for the licence. Under such licence, when obtained, the extra-provincial corporation may acquire, hold, mortgage, and sell removable property in the Province as if incorporated within the Province, may carry on business and exercise all powers covered by the licence.

Any person doing business for an unlicensed extra-provincial corporation is liable to a fine not exceeding $100, and in default three months' imprisonment.

Railways.—No. 35 amends the law respecting railways in a number of particulars, the meaning of "working expenses," care in crossing bridges, speed in thickly peopled parts of cities, grade crossings, fares, carrying gongs, and inspection.

Fire Insurance (Butter and Cheese).—No. 38 amends the law with regard to "Butter and Cheese Factories Mutual Fire Insurance Associations."

Timber (No. 39).—Lumbermen must mark their logs, unless exclusive ownership is proved. Unmarked logs in a drive on lakes, rivers, and streams in the Province are by this Act to belong to all who drive in the same lake or river.

The other Acts involve small amendments of detail.

8. NEWFOUNDLAND.

[*Contributed by* H. C. GUTTERIDGE, ESQ.]

Acts passed—20.

French Treaties.—No. 1 continues the Newfoundland French Treaties Act in force till December 31, 1904.

Supreme Court.—No. 3, intituled "The Judicature Act, 1904," consolidates the laws relating to the constitution, powers, and procedure of the Supreme Court, and is practically a re-enactment of No. 50 of the Consolidated Statutes (second series) and the Newfoundland Judicature Act, 1889. It is divided into nine parts, with a schedule containing the rules and an appendix of forms. It brings the procedure of the Newfoundland Supreme Court, *mutatis mutandis*, substantially into line with the procedure of the Supreme Court of Judicature in England.

Shipping.—No. 8 provides for the examination of and granting of certificates of competency to marine engineers.

Foreign Marriages.—No. 9 gives effect in the Colony to the Foreign Marriages Order in Council, 1903. In every case of a marriage under the Foreign Marriages Act, 1892, one of the parties who has resided for at least three consecutive weeks in the Colony must give the notice required by the Act to an official known as the Marriage Registrar. After this notice has been advertised in two consecutive issues of the *Royal Gazette* the Marriage Registrar (unless he is aware of an impediment) must grant a certificate to the effect that the notice has been duly given and published.

Whaling.—No. 10 amends the Act 2 Ed. VII. No. 11.

Game.—No. 11 amends the law relating to the preservation of game by establishing a close time for ptarmigan and partridge between January 12 and October 1 in each year.

Timber.—No. 13 allows the transportation of timber over all streams and lakes within the Colony. It also deals with the curious situation created by the celebrated Reid contracts, and enacts that the title to highways on the lands of the Newfoundland-Reid Company shall vest in the Crown as and when an actual survey of such lands is made.

Post Office.—No. 14 vests the control of the telegraphs and telephones in Newfoundland in the Postmaster-General of the Colony. This Act has also been rendered necessary by the Reid contracts, which placed the telegraphic system of the Colony under the control of private concessionaires.

Deer.—No. 15 amends the Deer Preservation Act, 1902. It prohibits the canning of caribou meat, and also forbids the sale of venison or caribou meat between January 1 and July 31.

Customs.—No. 16 amends the Customs Act, 1898, by empowering the

Minister of Finance and Customs to confiscate and sell imports invoiced at less than their market value.

Minor Acts.—No. 2 guarantees a profit of 5 per cent. up to $25,000 on the value of the buildings, plant, and machinery of the Newfoundland Cold Storage Reduction Company.

No. 4 amends the Placentia Water Company Act.

No. 5 deals with the coastal steam mail service.

No. 6 incorporates the Royal Trust Company.

No. 7 amends No. 105 of the Consolidated Statutes.

No. 12 was passed to remove doubts as to the validity of certain mineral grants made by the colonial government.

No. 17 amends the Revenue Act, 1901.

No. 18 authorises a loan of $100,000.

No. 19 authorises the raising of $12,000 by the sale of debenture bonds of the Colony.

No. 20 makes an appropriation out of the Consolidated Revenue Fund for the different branches of the public service.

X. WEST INDIES.

1. THE BAHAMAS.

[*Contributed by the* BAR ASSOCIATION *of the Bahamas.*[1]]

Acts passed—38.

Fisheries (No. 2).—The Sponge and Turtle Fishery Amendment Act, 1904, makes any master engaged in the sponge or turtle fishery liable on summary conviction to be imprisoned for a period not exceeding six months if, after he has entered into an agreement with a crew for a sponging or

[1] The Report of the Bar Association says: "During the year, although the amount of litigation has not been large, the average of previous years has been maintained. However, no necessity arose for a judicial decision of sufficient legal importance to require a report of it.

"On the other hand there has been considerable legislative activity. During the session just closed 42 bills were introduced, of which 38 became law. While the number of Acts passed has often been equalled and several times exceeded in the past, nevertheless in the importance of the matters dealt with the session has not many rivals. An important and beneficial consolidation of the Poor Laws of the Colony has been carried out. This was the joint result of a special commission and a select committee of the House of Assembly. Valuable codes dealing with Evidence, Sale of Goods, Mercantile Agents and Partnership have been added to the Statute-book. These are due to the energy and ability of the Attorney-General. Among the other matters dealt with were the Labour Traffic with Foreign Countries, Agriculture, the Sponge and Turtle Fisheries, Weights and Measures, Magistrates, and Sick Leave to Public Officers."

turtling voyage, he, without reasonable cause, (*a*) neglects or refuses to proceed on the voyage, or (*b*) disbands the crew engaged for the voyage.

This Act also repeals another Act and a portion of an Act. The effect of such repeals is to remove the limitation with respect to the amount of advances which can be recovered from the master and seamen by the parties supplying the outfit for the voyage.

The Sponge Fisheries Board Act, 1904 (No. 3), constitutes a board of seven members to make investigations in connection with the sponge beds of the Colony. The board has power to frame all necessary rules and regulations subject to the approval of the Governor in Council, and it has a grant of £200 for three years to carry out its investigations.

Empire Day (No. 4).—The Empire Day Act, 1904, makes May 24 a public general holiday unless it falls on a Sunday, when the 25th is substituted for it.

Foreign Marriages (No. 5).—The Foreign Marriages Act, 1904, gives effect in the Colony to the Imperial Foreign Marriages Order in Council, 1903. The notice required by the Act must be given to the Registrar of Records, who publishes it in the official newspaper. The party giving the notice must have resided in the Colony for the three consecutive weeks immediately preceding. A fee of 5*s*. is payable for a certificate. Any one may enter a caveat objecting to the grant of the certificate upon payment of a fee of 5*s*. The Registrar of Records decides upon the validity of such caveat, or in case of doubt refers the matter to the Attorney-General for his decision. An appeal lies to the Attorney-General from the Registrar's refusal to grant such certificate.

Tariff (No. 6).—The Tariff Continuance Act, 1904, continues in force for three years the existing tariff laws of the Colony.

Mercantile Agents (No. 7).—The Mercantile Agents Act, 1904, is a reproduction of the Imperial Factors Act, 1889.

Weights and Measures (No. 8).—The Weights and Measures Amendment Act, 1904, provides for the supply of measures for the measurement of pineapples. These measures must be stamped with a Government mark. Any one measuring pineapples for sale by any other measure is liable to a penalty of not less than £2 or more than £10 for each offence.

Treasury Payments (No. 9).—The Public Establishments Amendment Act, 1904, authorises the Governor to pay out of the Public Treasury any sum or sums of money due to a deceased person at the time of his death not exceeding in all £20 without the production of letters testamentary or letters of administration, and makes such payments valid against all persons whomsoever.

Shipping (No. 10).—The Sailing Vessels Passengers Regulation Act, 1904, applies s. 4 of the Sailing Vessels Passengers Regulation Act, 1901, to sailing vessels carrying passengers from any port within the Bahamas

to any port outside of the Colony not being a port in the United States of America. It enables the master after he has obtained his clearance, upon making a sworn declaration before a justice of the peace, to take additional passengers on board provided the total number does not exceed the number authorised by law. A master making a false declaration is liable to a fine not exceeding £50. Any revenue officer may detain any vessel until the provisions of the Act are complied with.

Public Accounts (No. 11).—The Auditor's Clerk Act, 1904, provides for the appointment of a clerk to the Auditor of Public Accounts.

Sick Leave (No. 12).—The Public Officers' Sick Leave Act, 1904, restricts the amount of sick leave to twenty-eight days in any one year. Officials whose salaries do not exceed £200 have a substitute provided at the expense of the Government.

Fishery Protection (No. 13).—The Fishery Protection Act, 1904, which repeals the Fishery Protection Act, 1902, defines a "foreign vessel" to be one not *bona fide* owned by a British subject within the Bahama Islands or any other British Colony or Possession, and prohibits any one on board of such foreign vessel from gathering sponge or any other marine product or from taking turtle or any fish within the territorial waters of the Bahama Islands, under a penalty not exceeding £100, and makes any foreign vessel used for any of such purposes liable to forfeiture. The Act also gives power of search over such vessel within the territorial waters. Any person resisting or obstructing any one acting under this Act is liable to a fine not exceeding £100, and may be detained until he can be carried before a justice of the peace.

Currency (No. 17).—The Currency Act, 1904, makes the gold coins of the United States of America of the values of $20, $10, $5, $2½ and $1 legal tender at £4 3*s.* 4*d.*, £2 1*s.* 8*d.*, £1 0*s.* 10*d.*, 10*s.* 5*d.*, and 4*s.* 2*d.* respectively, thus giving statutory force to a custom which has existed for many years in the Colony, although the legal tender value of such coins was fixed by Royal Proclamation in 1854 at £4 2*s.*, £2 1*s.*, £1 0*s.* 6*d.*, 10*s.* 3*d.*, and 4*s.* 1*d.*

Agriculture (No. 19).—The Board of Agriculture Act, 1904, creates a board of seven members for the purpose of making enquiries, experiments, and researches in agriculture and for establishing a botanic station in the island of New Providence. The Act is to continue in force for five years and provides for an annual grant of £500 to the board.

Supply (No. 20).—The Appropriation Act, 1904, grants £21,191 14*s.* 11*d.* for the performance of public works, etc.

Poor (No. 21).—The Asylum Act, 1904, repeals all existing laws dealing with the care and maintenance of the poor and consolidates many of their provisions with several important changes. It increases the number of commissioners from three to seven; incorporates the Board; vests all land in the corporation; and places all buildings and structures on such land

under the care and superintendence of the Commissioners. The Board has also placed under its care the support of the aged and infirm poor, the medical treatment and care of the sick poor and of all lunatics and lepers committed and admitted to the institution. An additional trained nurse is provided whose services are available for cases outside of the institution. The Act makes provision for a relieving officer, to whom all applications for admission must in the first instance be made, and whose duty it is to enquire personally into the condition of every applicant who resides in the island of New Providence; for a clerk to do the clerical work of the institution and to represent the Commissioners in all legal proceedings; and for a matron who must be a duly qualified trained nurse. Provision is also made for the training of pupil nurses. The Act is limited to a period of three years. It is the joint result of a special commission, whose recommendations, as embodied in the bill as first submitted to the Legislature, were modified by a select committee of the House of Assembly.

Foreign Labourers (No. 22).—The Foreign Labourers Protection Act, 1904, repeals the Foreign Labourers Protection Act, 1903, and deals with the subject more exhaustively. The Act under a penalty of £10 makes it unlawful to engage any person to serve as a labourer in any foreign country or on board any ship trading with any foreign country unless the contract is signed in the presence of a magistrate. This contract must be signed in duplicate, and one part of it must be deposited with the magistrate. Each labourer is entitled to a copy. The magistrate must be satisfied that the labourer fully understands the contract, and is required to see that the Act is strictly complied with. The agent who engages the labourers is made personally liable for the amount due to them under the contract. Any labourer who fraudulently attempts to evade his contract is liable to imprisonment for any period not exceeding three months. If an agent gives a draft to any labourer for his wages which is not honoured on presentation, such agent must pay damages to the labourer at the rate of 15 per cent.

Expiring Laws (No. 26).—The Expiring Laws Continuance Act, 1904, is the usual annual Act continuing in force such Acts as would have expired with the end of the session of 1904. A departure has been made in the form of this Act. Previously all of the Acts were continued for a uniform period, but the Act of this year by means of a schedule has provided various periods of continuation for the several Acts, ranging from one to five years.

Quarantine (No. 27).—The Out-Island Medical Amendment Act, 1904, provides the fee of a guinea for out-island physicians who visit a vessel detained under the Quarantine Laws.

Rules and Orders (No. 31).—The Statutory Rules and Orders Act, 1904, authorises collection and publication in one pamphlet of all existing statutory rules and regulations and all Orders in Council, and provides for

the annual publication of all future ones as an appendix to the annual collection of statutes.

Ordnance Lands (No. 32).—The Ordnance Lands Act, 1904, vests all lands formerly occupied for military purposes, with certain exceptions, in the Governor of the Colony for the use of the Colony upon certain conditions.

Choses in Action (No. 33).—The Choses in Action Assignment Act, 1904, is a reproduction of sub-s. 6 of s. 25 of the Imperial Judicature Act, 1873, with a few verbal changes.

Magistrates (No. 34).—The Magistrates Amendment Act, 1904, declares that any magistrate who is neither a salaried magistrate nor a magistrate specially authorised under the Act shall not be competent to sit singly for the trial of any case within his jurisdiction except in conjunction with one or more magistrates. He may, however, issue summonses or warrants, or take any other step preliminary or incidental to any judicial proceedings within his jurisdiction. The Act empowers the Governor in Council, by Order in Council, to nominate any magistrate to try cases singly. In a Court consisting of salaried and unsalaried magistrates the salaried magistrate takes precedence, and in a Court consisting of unsalaried magistrates the one who is senior in the order of appointment presides. In the event of any disagreement the opinion of the presiding magistrate prevails. It is also his duty to take notes of the evidence, to collect and dispose of all fees, fines, etc., and to take all the necessary steps in connection with an appeal from the decision of the Court over which he presided. In the island of New Providence one of the stipendiary and circuit magistrates must be a member of every Court. The Act also changes the venue of civil proceedings, which now must be in the district in which the cause of action arose or the defendant resides or carries on business. It also extends the period within which an action may be brought against a magistrate from three to six months. A magistrate may not refuse to issue a summons unless he is of opinion that the application for it is frivolous or vexatious, or an abuse of the process of the Court. It provides for the notification to an appellant of the time fixed for the hearing of an appeal on the out-islands. The Act also defines the cases in which the jurisdiction of a magistrate is ousted by the raising of questions of title to land.

Trustees (No. 35).—The Trustee Relief Act, 1904, is a reproduction of s. 8 of the Imperial Judicial Trustees Act, 1896.

Partnership (No. 36).—The Partnership Act, 1904, is practically a transcript of the Imperial Partnership Act, 1890.

Sale of Goods (No. 37).—The Sale of Goods Act, 1904, is practically a transcript of the Imperial Sale of Goods Act, 1893.

Evidence (No. 38).—The Evidence Act, 1904, codifies the law of evidence. It is an exhaustive treatment of the entire law of evidence in 172 sections, and is a successful blend—with improvements—of the Indian Evidence Act and the Grenada Evidence Act. The principle of permitting

evidence to be given by persons charged with offences and their husbands or wives has been adopted. The same safeguards have been provided as exist in the Imperial Criminal Evidence Act, 1898.

Short Titles (No. 39).—The Short Titles Act, 1904, provides short titles for 410 Acts, and collective titles for 112 groups of Acts. It also makes provision for the numbering of a bill which has been reserved for the signification of the Royal pleasure. If the Royal assent is given in a year subsequent to a date contained in the short title to such Bill, the date of the year in which such assent is given is substituted for the date contained in the short title.

2. BARBADOS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Acts passed (1904)—44.[1]

Postal (No. 1).—The Post Office (Amendment) Act, 1904, empowers the Governor for the insurance of letters to adopt the provisions of the Insurance Agreement of the Postal Union, signed at Washington on June 15, 1897, and make rules and regulations for the working of the system.

Land Surveyors (No. 2).—The Surveyors (Land) Amendment Act, 1904, provides that no person shall be eligible for the appointment of a land surveyor unless he has worked for one year at least with a licensed surveyor and can produce certificates thereof and testimonials as to character, and in addition prove his competency for the duties of land surveyor in accordance with the regulations of the Act, which contains savings and exceptions in favour of land surveyors existing at the date of the Act.

Friendly Societies (No. 3).—The Friendly Societies Act, 1904, empowers the Governor to appoint a barrister of not less than two years' standing, or a solicitor of not less than five years' standing, to be the Registrar of Friendly Societies. The Act provides for the registration of all societies which have not been incorporated under any special Act.

Itinerant Vendors (No. 4).—The Itinerant Vendors Licensing (Amendment) Act, 1904, requires all hawkers, pedlars, and itinerant vendors to produce their badge to any justice of the peace, police magistrate, or police officer when required so to do under penalty of arrest and, on conviction, of a fine.

Mongoose (No. 6).—The Mongoose (Destruction) Act, 1904, establishes for the destruction of the mongoose a payment of 3*d.* per head, and the Act is to continue in force until March 31, 1905.

[1] Acts are passed by the Governor, the Council and the Assembly of the island, and are numbered consecutively for the calendar year.

Emigration (No. 9).—The Emigration Amendment Act, 1904, makes it compulsory on all emigration agents to give security for the due discharge of their duties. The Act also provides penalties in the case of intending emigrants to foreign countries refusing to perform their contract of service after receipt of the consideration in money, food, or clothing.

Sugar Industry (No. 12).—The Imperial Free Grant (Disposition) Act, 1904, makes provision for the ultimate application of the grant of £80,000 by the Imperial Parliament in 1902 in aid of the sugar industry by vesting the same, subject to its liabilities under the Plantations-in-Aid Acts of 1902 and 1903, in the Governor in Executive Committee upon trust for such objects as will best promote the collective and permanent interest of the sugar industry of the island. But no part of the grant shall be paid to owners of sugar plantations or other persons interested in the sugar industry.

Sugar Plantations (No. 13).—The Plantations Further in Aid Act, 1904, gives the Executive Committee additional borrowing powers up to £200,000 for the purposes of the Plantations-in-Aid Acts, 1902-4, and provides for the repayment of the sums borrowed on or before August 31, 1905. The amount borrowed is charged upon and made payable out of (*a*) the securities held by the Government of Barbados for advances under the Acts, (*b*) the grant in aid of the sugar industry by the Imperial Government, and (*c*) the general revenue and assets of the Colony. The Executive Committee is empowered out of the money borrowed to make advances to owners of plantations subject to special conditions for their due application in the cultivation of the plantation. All such advances are made a first lien and charge against the plantations, except as to liens under the principal Act, and also a first lien and charge against the crops of 1905, except, as to such crops, in respect of advances for manure and taxes under the Agricultural Aids Acts, 1887-1902, made before June 1, 1904, and advances under the Act on borrowing certificates under the Agricultural Aids Acts, 1887-1902, dated on or after June 1, 1904, but prior to date of loans under the Act. Every borrower is made liable under penalties to account to the Commissioners for the proceeds of the crops in respect of which advances have been made.

Auctioneers (No. 14).—The District Auctioneers (Amendment) Act, 1904, amends the Provost Marshal's Act, 1891, and the principal District Auctioneers Act of 1890. Under the principal Act district auctioneers are appointed by the Governor for the purpose of selling goods and chattels distrained and levied on, subject to certain provisions therein contained and by this Act amended.

Chancery (No. 15).—The Chancery (Amendment) Act, 1904, varies provisions in the Chancery Acts of 1891, 1898, and 1899. A creditor, not being the plaintiff in any suit, may notify the plaintiff of his desire for a sale of land, and thereupon, failing plaintiff's application for usual

decree for sale, may apply by motion in the suit for a sale. On any sale or direction to rank liens by the Court an advertisement in the *Official Gazette* shall call for liens and encumbrances to be brought before the Master in Chancery for his examination and report, and on failure so to do within the time specified the land shall be sold discharged from the lien. Further provisions are made as to sales of land and payment out of court of any funds representing the proceeds of the rents, issues, and profits of the land.

Lepers (No. 19).—The Lepers Act, 1904, subjects persons suffering from leprosy to various restrictions and prohibitions for the security of the public health.

Police Magistrates (No. 22).—The Police Magistrates (Further Amendment) Act, 1904, gives power of summary conviction to police magistrates in the case of prisoners charged with wounding with knife, etc., when the wound is of a slight or trivial nature.

Sugar Bounties (No. 25).—The Bounty-Fed Sugar (Amendment) Act, 1904, empowers the Governor in Executive Committee to prohibit any sugar being imported, which the permanent Commission under the Brussels Sugar Convention of March 5, 1902, has decided to be bounty-fed.

Fisheries Preservation (No. 27).—The Sea Egg Preservation Act, 1904, establishes a close season for sea eggs, with statutory penalties against persons catching, destroying, or dealing in sea eggs during the close season.

Solicitor-General (No. 28).—The Solicitor-General Salary Act, 1904, fixes £250 as the salary payable to the Solicitor-General.

Jurors (No. 29).—The Jurors (Amendment) Act, 1904, makes aliens domiciled and resident for ten years liable to serve on all juries except on grand or special juries, and save as aforesaid no man not being a natural-born subject of the King shall be qualified to serve on juries. Persons convicted of treason or felony or under outlawry are disqualified as jurors.

Post Office (No. 30).—The Post Office Amendment Act, 1904, enables the Governor to enter into the necessary arrangements for the issue and payment of British postal orders in the General Post Office of the Colony.

Police Magistrates (No. 38).—The Police Magistrates (Amendment) Act, 1904, after defining a "child" as a person under the age of twelve years, and a "young person" as one under the age of sixteen years, and "guardian" as the person having charge of a child, provides for the issue of a summons against the parent or guardian of a child or young person charged with any offence to which the parent or guardian may have conduced by wilful default or habitual neglect to exercise due care over him, and makes such parent or guardian liable to the jurisdiction of the magistrates for payment of fine, damages, and costs.

Cruelty to Children (No. 39).—The Prevention of Cruelty to Children Act, 1904, punishes a person who, having charge of any child under sixteen years of age, shall be guilty of cruelty as defined by the Act to such child with fines and imprisonment, and gives power to constables to take such offenders into custody without a warrant and to place the child in a place of safety pending its being brought before a police magistrate. Provisions as to the ultimate custody of the child and as to evidence and procedure before the magistrates are contained in the Act.

Marriage Laws (No. 41).—The Foreign Marriage Act, 1904, enables the provisions of the Foreign Marriage (Imperial) Act, 1892, to be exercised in the island by a notice given by one of the parties intending such marriage, and who has been for three weeks resident, to the police magistrate of the district wherein such party has resided.

Copyright (No. 42).—The Copyright (Works of Art) Act, 1904, gives to the author of every original painting, drawing, and photograph made in the island, and his assigns, a copyright for his natural life, and seven years after his death, but where such painting, drawing, or photograph has been sold to or executed for another person, the author shall not retain the copyright unless expressly reserved to him at the time of the sale or execution by agreement in writing. The Act contains provisions making copyright personal property and assignable at law, and for registration on the register established by the Act, and provides penalties on infringement of the copyright and for fraudulently affixing signatures, names, initials, or monograms to any painting, drawing, or photograph.

Oil-Refining Industry (No. 43).—The Oil Mines Act, 1904, in order to promote the interests of the island and for Imperial purposes, declares that it is desirable that the oil industry should be actively carried on. It gives the Imperial Government a right of pre-emption of all oil residues at a price to be agreed upon between the owners of the oil and the Imperial Government, or at a price, failing such agreement, to be determined by arbitration. Power is given to stop the sale of all oil residues to private persons after notification in the *Official Gazette* of the desire of the Imperial Government to become the purchaser. Provisions enabling the Governor in Executive Committee to make regulations as to the sites of the oil refineries, stores, and places of shipment, and by provisional order to grant compulsory powers to any persons to bore for oil on private property, are contained in the Act, and there is express reservation of any rights already acquired by the West Indian Petroleum Company, Limited, or any other company or person.

Druggists (No. 44).—The Druggists Amendment Act, 1904, enables any person qualified as a druggist in any British Colony and for three years engaged in the business to sit for the examinations mentioned in the principal Act, and after passing the examinations and the registration of his name on the Register, to practise as a druggist.

3. BRITISH GUIANA.

[*Contributed by* Sir Thomas Rayner, A.-G.]

Ordinances passed, 20: Public, 13; Private or Local, 7.

The following are the more important of the Public General Ordinances:

Revenue.—Nos. 1 and 2 are the annual Customs Duties and Tax Ordinances, passed by the Combined Court to provide ways and means for carrying on the government of the Colony during the financial year 1904-5, the Legislature of the Colony, like the House of Commons in England, refusing to grant supplies for more than a year at a time. The Customs Duties Ordinance provides for the levying of customs duties, partly specific and partly *ad valorem* (the latter being 15 per cent.), and the Tax Ordinance provides for what may be called the inland revenue of the Colony.

Sugar Convention.—Nos. 3 and 15 were passed to make provision with regard to the Brussels Sugar Convention. No. 3 was based on the Imperial Sugar Convention Act, 1903 (3 Ed. VII. c. 21), and gave power to prohibit the importation into the Colony of bounty-fed sugar, but as under the Convention the Crown Colonies were not parties to it, and were not therefore bound to prohibit the importation of bounty-fed sugar, it was considered unnecessary for the Colony to legislate beyond what the occasion required, and accordingly this Ordinance was repealed later in the year, and No. 15 passed in its place, which merely made provision for the issue of certificates of origin for sugar exported from the Colony, so as to ensure the sugars of the Colony being admitted into the markets of those countries which are parties to the Convention.

Statute Law Revision.—Nos. 6 and 20 are two Statute Law Revision Ordinances which make a number of small amendments in the Law, and which by being all included together in one or two Ordinances, avoid the necessity of cumbering the Statute-book of the Colony with a number of short amending Ordinances. For the last ten or twelve years an Ordinance of this kind has been passed every year.

No. 7 was passed to make provision for the preparation and publication of a new edition of the Statute Laws of the Colony. The last edition was published in 1895, and in the ten years that had elapsed a large number of Ordinances had been passed and considerable amendment had been made in the law, and to a large extent the edition of 1895 had become obsolete, and accordingly it was decided to issue a new edition, and the duty of preparing it was entrusted to the Attorney-General of the Colony, whom the Ordinance in question appointed a Commissioner for the purpose. This Ordinance is with very slight modification a re-enactment of a similar

Ordinance passed in 1894 (No. 1 of 1894), under which Sir John Carrington, then Attorney-General of the Colony, prepared the edition of 1895, and is in much the same terms as Ordinances passed for the same purpose in other Colonies. This Ordinance gives the Commissioner wide powers of revision and consolidation, and empowers him to make almost any change in the form of the law without altering its substance. The preparation of the edition has now (July 1905) been completed, and it will be issued from the press in a few weeks' time, and will consist of five volumes—four volumes of Ordinances and an index volume.

Petitions of Right (No. 9).—The Petition of Right Ordinance has been passed to provide a proper procedure by which actions can be brought by and against the Government. Previously to the passing of this Ordinance no procedure for this purpose had ever been laid down, and doubts had often arisen as to the correct procedure to be adopted. This Ordinance enacts substantially the same procedure as that which obtains in England, and is based on the English Petition of Right Act, 1861, and under it the fiat of the Governor is required before any action can be brought against the Government. It is similar in terms to Ordinances passed for the same purpose in several other Colonies, except that it does not give a right of action for torts as do the Ordinances of some other Colonies.

Vestries (No. 11).—By two Ordinances passed in 1826 and 1836 the Colony was divided into parishes, some of which were assigned to the Church of England and others to the Church of Scotland. By an Ordinance of 1849 a vestry, appointed by the Governor, was constituted for each parish, and, in addition to its ecclesiastical functions, certain civil duties, such as poor relief, were assigned to it. These latter functions, however, had from time to time all been transferred to other bodies, and the parish boundaries had long become obsolete and inconvenient, for neither Church could, in the altered circumstances of the time, confine its ministrations exclusively to the area of the parishes originally assigned to it, though so long as the Ordinance creating the parishes remained in force, neither Church was at liberty to constitute other parishes or districts more convenient for its work and organisation. As neither the parishes nor the vestries now served any useful purpose, they were abolished by the Ordinance under review, and the Church of England and the Church of Scotland are free to constitute their own parishes and parochial organisations.

Married Women (No. 12).—The Married Persons' Property Ordinance is probably the most important Ordinance passed during the year, for it makes a great change in the Roman-Dutch common law of the Colony, abolishing marriage in community of goods and substituting for it the English law as to married women's property. Its effect, however, is limited to persons married after its passing. It is based almost entirely on the English Married Women's Property Act, 1882, but it departs from it in two particulars: firstly, it does not affect the after-acquired property of persons

married before its passing; and secondly, it places a husband or wife in exactly the same position as the other creditors of each other, in respect of loans made by one to the other for the purpose of carrying on any trade or business.

This Ordinance in some respects operates in a different way from the English Act, for while the English Act was passed for the protection of the wife only, this Ordinance was passed as much for the protection of the husband as of the wife. Formerly the property of a husband and wife married in community of goods under the Roman-Dutch law, whether acquired before or during the marriage, became their joint property, and if either died intestate half of it passed to the other's heir, who, under the Roman-Dutch law, was not the husband or wife; and it might, and indeed did, occasionally happen that a man on his wife's death had to part with half the fruits of the labour of a lifetime to a stranger. The Ordinance, though operating in a different way from the English Act, effects the same end, and allows both husband and wife to retain and control their own property.

Whilst legislating on this subject opportunity was taken to remove the incapacity of women to enter into the contract of suretyship. This was done by providing that the *Senatus Consultum Velleianum* and the benefit *Authentica si quæ mulier* should henceforth be of no force in the Colony. It seems a circumstance worth noting that a Roman statute was still in force in the twentieth century, and it had to be formally repealed by the legislature of a British Colony.

Poisons (No. 17).—The Pharmacy and Poisons Ordinance amends the law with regard to the sale of poisons, and makes provision for the training of chemists and druggists.

Official Salaries (No. 18).—The Civil List Ordinance provides for the payment of the salaries of certain officials of the Government for the term of three years. It has been the custom for many years for the Court of Policy, acting on a resolution of the Combined Court, which alone can authorise taxation, to pass an Ordinance such as this, securing for a certain term of years the salaries of the chief officials of the Government, and charging them upon the colonial revenues. Formerly, these Ordinances were usually passed for seven years, but latterly the Legislature has refused to pass them for longer than three years.

Of the seven private Ordinances, No. 10 incorporates the Roman Catholic Bishop, and creates him a corporation sole, and empowers him to hold property on behalf of his Church, and vests such property in him; and another, No. 13, amends an Ordinance providing for the government of the Church of Scotland in the Colony.

Practice as to Private Ordinances.—In this Colony no special provision is made as to the passing of private Ordinances, and they are dealt with and printed in the same way as public Ordinances. Provision was, however, made in the Standing Rules and Orders of the Court of

Policy in 1902 to enable persons who might be affected by any private bill to be heard, either personally or by counsel, before the Court of Policy, and a fee of $100 (£20 16*s.* 8*d.*) has to be paid for every private bill before it is read a second time. With these two exceptions no difference is made in this Colony between public and private bills.

4. BRITISH HONDURAS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed (1904)—20.[1]

Burial.—Ordinance No. 5 makes provisions for the disinterment and re-interment of the bodies of persons buried within the Colony upon the application of any person deemed by the Governor in Council to be a fit and proper person, and the permission of the Governor-in-Council being granted.

Hospitals.—Ordinance No. 7 amends the Medical Service and Institutions Ordinance, 1894, and enables medical officers in charge of any hospital to admit urgent emergency cases without order. The medical officer is required to report the case to the District Commissioner, who has power to issue an order making the patient liable for payment of hospital dues from the date of admission.

Evidence (No. 8).—The Criminal Evidence Ordinance, 1904, makes every person charged with an offence, and the wife or husband, as the case may be, of such person a competent witness for the defence, provided (*a*) that the prisoner is willing; (*b*) that, if not willing, such unwillingness of the prisoner, or the wife or husband of the prisoner, shall not be commented on by the prosecution; (*c*) that the wife or husband shall only give evidence on application of the prisoner; (*d*) that communications between husband and wife shall be privileged from disclosure; (*e*) that prisoners electing to give evidence must answer incriminating questions as to charge before the Court in cross-examination; (*f*) but not in relation to any other charges or convictions unless (i) proof of such convictions is admissible evidence of guilt as to the offence then charged, or (ii) the prisoner in defence has adduced evidence of good character or impugning the character of the prosecutor or his witnesses; or (iii) the prisoner has given evidence against another prisoner tried for same offence; (*g*) that every person called as witness shall give evidence from the witness-box; (*h*) that the existing right of the person charged to make a statement without being sworn, under the protection of the judge's caution in doing so, is not to be affected.

[1] Ordinances are passed by the Governor with the advice and consent of the Legislative Council, and are numbered consecutively for the calendar year.

Provisions are made that the right of reply, if evidence has been called for the defence, is not available to prosecution if only the person charged has given evidence; also that husband and wife shall be competent witnesses against each other in criminal or matrimonial proceedings between them.

Criminal Law.—Ordinance No. 15 amends the existing criminal law statute and fixes a maximum period for imprisonment for non-payment of fines on conviction with or without hard labour at the discretion of the Court, except that hard labour in the case of a child must not be ordered. Provisions are made for the summary trial of young children, with power in the case of boys to order private whipping; of young persons, with powers of fine and imprisonment, and, in the case of males, to order whipping; and of adults, with powers of imprisonment and fine.

Oaths and Affidavits (No. 16).—The Extra-Colonial Oaths Ordinance, 1904, enables any Commissioner of the Supreme Court of British Honduras both in the Colony and elsewhere, and any other persons having authority to administer oaths in any place outside the Colony, to administer oaths or take affidavits for the purpose of any matters or proceedings in the Supreme Court of the Colony. Like powers are conferred upon British ambassadors, envoys, ministers, chargé d'affaires, secretaries of embassies, and legations, British consuls and consular agents exercising their functions in any foreign place. In this Ordinance "oath" includes affirmation and declaration; "affidavit" includes affirmation, statutory or other declaration, acknowledgment, and examination; and "swear" includes affirm and declare.

The Sugar Convention, 1902 (No. 18).—The Sugar Convention Ordinance, 1904, enables the Governor to prohibit by Order in Council the importation of sugar from any foreign country, not party to the Convention, which gives any direct or indirect bounty on the production or export of sugar; but molasses and glucose and sugar in transit are excepted.

Auctioneers (No. 19).—The Auctioneers Ordinance, 1904, provides that every person who shall conduct a competition sale of land, goods, or chattels shall be deemed an auctioneer within the meaning of the Ordinance; and it shall not be lawful for such person to act without taking out a licence, giving security, and otherwise becoming liable to the general provisions of the Ordinance and to the penalties for any infraction of the same. The Ordinance further regulates the conduct of auction sales, both as regards the auctioneer and the bidders. Sales of property under judicial process or distraint for rent by the proper officer are exempted from the Ordinance.

5. JAMAICA.

[*Contributed by* Albert Gray, Esq., K.C.]

Laws passed—29.

Rating.—By Law No. 16 of 1903 the basis of the assessment of poor rate was altered, the full value being taken instead of the annual value. Law No. 2 of 1904 now extends this mode of assessment to water, irrigation, fire, and electric lighting rates. The operative words of the Law are: "Every £10 or fractional part thereof of the value of property is hereby declared to be the basis upon which . . . rates . . . shall be assessed: provided that the value of any property under the value of £40 shall be taken to be £20."

Hotels.—By Law No. 15 it is proposed to exempt hotels from certain customs duties and other liabilities in order to promote the building of hotels for the attraction of tourists. The preamble recites "that it is desirable to encourage the erection and equipment of hotels in this Island, so as to provide for the comfort and entertainment of tourists and others." The law applies to persons proposing to erect any hotel containing not less than forty bedrooms. They may obtain from the Governor in Council an "import licence" which is to free them from customs duties in respect of all fixtures and furniture imported for the hotel. After the importation, it is unlawful to remove from the hotel any article so imported under a penalty of £100, to which every partner, director, or manager is liable. But the property may, with the cognisance of the Collector-General, be sold, when no longer required, on payment of the full import duties. When the furniture is supplied by a local merchant, the amount of the customs duties may be recovered as drawback. Where an import licence is obtained, the premises on which the hotel is built is free from liability to increased rates for ten years.

Administration.—In our last review (*Journal* N.S. XIV. p. 461) we noticed a Law authorising executors who had taken commission out of the estates administered before July, 1902, to retain the same, notwithstanding the decision of the Courts that such commission was unlawful under 24 Geo. II. c. 19. The custom seems to be so well established in Jamaica, that it has been thought proper to regularise it and to repeal s. 8 of the Act of Geo. II. The new Law (No. 18) provides that where remuneration is not provided by the will, and in administrations, the executor or administrator is authorised to take the same commission as that taken by the Administrator-General in respect of estates administered by him under Law 34 of 1873. Where there is more than one, the commission is divided.

Bank and Currency Notes.—No person, except a banker as defined, is permitted to issue bank-notes (No. 20). A banker desiring to issue notes must deposit with the Crown Agents in London or with trustees to be

appointed by the Governor a fund of coin or securities equal to the note issue. The amount of the note issue is in no case to exceed the paid-up capital of the bank. The Secretary of State may dispense with the requirements as to deposit in the case of bankers having their principal establishments in other British possessions, where he is satisfied that the issue is sufficiently secured. There is also a further Law (No. 27) providing for the issue of Government currency notes. This Law is drawn on the usual colonial model.

Jamaica Rum.—Law No. 26 recites that "a quantity of inferior rums and spurious imitations of Jamaica rums have been put on the markets of the United Kingdom and elsewhere, and sold as genuine Jamaica rum, to the detriment of the Island." It is therefore enacted that the Governor may appoint a properly qualified person to institute proceedings in the United Kingdom (and elsewhere) under the provisions of the Merchandise Marks Act, 1887. For this purpose the Law authorises an export duty on rum of 10*d.* per puncheon, to be placed to "the Jamaica Rum Protection Account." The properly qualified person may be paid a salary not exceeding £250 a year.

6. TURK'S AND CAICOS ISLANDS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed (1904)—5.[1]

Pensions (No. 2).—The Pensions Ordinance, 1904, charges the general revenue of the Dependency with the pensions granted under this Ordinance to persons who have been in the public service of the Dependency. No public officer to be entitled to pension for service under the age of twenty; or who has not reached the age of fifty-five, except under certain special circumstances. Public officers may be retired by the Governor-in-Chief with the approval of the Secretary of State at any time after attaining the age of sixty-five years. No absolute right to compensation for past services or to a pension is to arise under the Ordinance. Pensions are not to be assignable or transferable, or liable to attachment for debt, and are to cease in the case of persons who are sentenced for a criminal offence by any Imperial Court, also in the case of bankruptcy; but in this case discretionary power is given to the Governor-in-Chief to pay all or a portion of the pension under certain circumstances to the pensioner or his wife and family.

Medical Officers (Government) (No. 4).—The Medical Service Ordinance, 1904, gives power to the Governor-in-Chief to appoint District Medical Officers and regulates their power and duties.

[1] Ordinances are made by the Legislative Board of the Turk's and Caicos Islands, and require the assent of the Administrator of the Government, or of the Governor-in-Chief, the Governor of Jamaica.

Savings Bank (No. 5).—The Savings Bank (Amendment) Ordinance, 1904, contains special regulations as to the entries to be made in the depositors' pass books and the production to the bank of the same on all transactions.

7. TRINIDAD AND TOBAGO.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed (1904)—27.[1]

Crown Lands (Forests) (No. 2).—The Forest Produce Ordinance, 1904, gives to the Sub-Intendant of Crown Lands and other officials and to the police power to seize timber or other forest product when being removed from any Crown land without a licence, and also any vehicle used in the removal, and to detain the person so removing the same in order to bring him before a justice of the peace, and failing evidence justifying the removal of such timber, the same shall be forfeited to the Crown and sold by the Warden. All persons removing timber from Crown lands without licence are made liable on conviction to fine and imprisonment.

Dogs (No. 3).—The Dogs Ordinance, 1904, penalises the owners of dogs allowed to stray without the label required by the Dogs Ordinance of 1895.

Judgments: Civil Courts (No. 7).—The Petty Civil Courts Ordinance, 1904, amends a like Ordinance of 1901 and enables a new judgment to be entered up in place of any judgment prior to March 23, 1903, the record of which has been lost, and proceedings on such new judgment are to be as if they were taken on the original judgment.

Dogs, Importation of (No. 9).—The Importation of Dogs Ordinance, 1904, authorises the Governor in Executive Council to prohibit by proclamation the importation of dogs into the Colony, and imposes penalties on masters of ships and other persons landing such dogs in contravention of the proclamation.

Land Clearing (No. 10).—The Fire Ordinance, 1904, amends a like Ordinance of 1869 by requiring notice to be given to the Warden of the ward by persons desirous of obtaining a licence for setting fire to any land, such notice to specify the local situation, extent and abuttals of the land. A space of 25 feet in width is required to be first cleared round the land to be fired to the satisfaction of the Inspector before the issue of the licence.

Public Roads (No. 11).—The Roads Ordinance, 1904, amends like

[1] Ordinances are made by the Governor with the advice and consent of the Legislative Council, and private and public Ordinances are numbered consecutively for the calendar year.

Ordinances of 1894—1899. Persons of unsound mind, bankrupt, holding office in a Local Road Board, or interested in any contract made by the Board, are disqualified from membership on a Local Road Board. Persons are qualified who possess or occupy property within the Road Union of a value which would qualify for a juror, whether therein resident or not, and if resident therein who enjoy a personal yearly income of not less than £150. The Local Road Board is to be elected by the votes of persons on the assessments rolls of any ward within the union.

Marine Stores (No. 12).—The Old Metal and Marine Stores Ordinance, 1904, makes it compulsory on dealers in old metal and marine stores to take out a licence under this Ordinance, and generally regulates the method in which their business is to be carried on and gives the police powers of entry and inspection.

Waterworks (No. 13).—The Port-of-Spain Waterworks Ordinance, 1904, constitutes and incorporates the Port-of-Spain Water Authority for the purpose of managing existing waterworks and constructing additional ones, with powers of compulsory acquisition of land and private water rights and of levying water-rates.

Sewerage (No. 14).—The Sewerage (Amendment) Ordinance, 1904, repeals one Ordinance and amends other like Ordinances, and constitutes the Water Authority under the provisions of the preceding Ordinance (No. 13, 1904) to be the Sewerage Board, which is to undertake the maintenance and repair of sewerage works.

Fire Brigades (No. 15).—The Fire Brigades Ordinance, 1904, constitutes fire brigades for all boroughs, towns, or districts defined by the Governor in Executive Committee for the purpose of extinguishing fires within such district, or within one mile thereof. The fire brigade may be composed of volunteers and members of the police force. The Ordinance provides for the training and payment of the men, and levies one-sixth of the whole expenses as a contribution from the insurance companies; and by way of further contribution one-third of the expense is to be paid by the municipal authority in the borough or town. Regulations as to the duties of the police and the fire brigades when present at fires and their powers and immunities when on duty are contained in the Ordinance.

Law Revision (No. 17).—The Law Revision Ordinance, 1904, repeals certain Ordinances comprised in a schedule, with a saving of all enactments, not included in the schedule, which have been repealed, confirmed, revised, or perpetuated by one included therein, from being affected by such repeal; and any enactment, in which a repealed enactment is incorporated, or referred to, is not to be affected by this Ordinance. There is also a general saving of the validity of all acts done under the enactments repealed and of all existing rights by virtue thereof.

Cold Storage (No. 19).—The Port-of-Spain Cold Storage Ordinance, 1904, makes a licence from the Commissioners of the Borough of Port-of-Spain

compulsory for all persons using any premises as cold stores, and establishes a system of official inspection of all such places, with power to seize unwholesome food.

Crown Grants (No. 20).—The Crown Grants and Crown Leases (Re-issue) Ordinance, 1904, enables the Governor, in the event of any grant or lease of land prior to August 9, 1889, having been destroyed or lost, to issue under the Public Seal of the Colony certificates showing the date, name, and other particulars of such grant or lease.

Rateable Value (No. 21).—The Port-of-Spain House Tax (Explanatory) Ordinance, 1904, declares that the expression "annual rateable value" in the House Tax Ordinance, 1899, means the gross annual rental value after such deductions and allowances therefrom as the assessor may think just and reasonable. In cases where the tenant pays rates and taxes the annual rateable value is to consist of the annual rental, together with the amount of the rates and taxes paid or payable by the tenant, subject to such deductions as the assessor may think reasonable.

Foreign Marriages (No. 24).—The Foreign Marriage Ordinance, 1904, gives legislative effect to the Orders in Council issued under the Foreign Marriage (Imperial) Act, 1892, by making provisions as to notices of an intended marriage, the publication thereof by the Registrar and the grant by him of his certificate of such notice and publication for transmission to the foreign marriage officer in the district in which the intended marriage is to be solemnised.

Postal Orders (No. 25).—The Post Office Ordinance, 1904, enables British postal orders of the same pattern as those in use in the United Kingdom to be issued and paid in the Colony.

Legal Procedure (No. 26).—The Petty Civil Courts (Amendment) Ordinance, 1904, varies the powers of the Court to issue summonses for witnesses contained in a previous Ordinance of 1901, and enables the judge to inflict a fine on witnesses refusing or neglecting to attend and give evidence. Witnesses may give evidence either upon oath or upon solemn affirmation.

8. WINDWARD ISLANDS.

(i) GRENADA.

[*Contributed by* CHARLES J. TARRING, *ex-Chief Justice of Grenada.*]

Ordinances passed—15.

Escheat (No. 3).—The Escheat (Amendment) Ordinance concerns a prerogative of the Crown, which in England has become of small importance, but which in this Colony is frequently exercised. Some light may be thrown upon this fact when it is noticed that the average percentage for the ten

years 1893-1902 of illegitimate births to the total number was 48·69, while the average number of marriages per annum during the same period was only 398 out of a population estimated at 56,413 in 1893, steadily increasing to 65,627 in 1902. The Ordinance, which consists of thirteen sections, provides that the police magistrate for the southern division (the Chief Magistrate of the Colony), shall henceforward perform and discharge, *ex officio*, all the duties and functions as defined by the Escheat Act of 1872 (Act CXIV.) of the Escheater-General, who, as a separate officer, has ceased to exist; although the title is still applied to the police magistrate when acting in that capacity. Every proceeding in the Escheat Court is in future to be instituted by the Attorney-General, and to him all informations and communications regarding properties supposed to be escheatable are to be given instead of, as formerly, to the Escheater-General. The enquiry is before a jury. Where claims on legal, moral, or equitable grounds to grants or transfers of escheated property are made (as is permitted by Act CXIII.) the Governor in Council may, besides requiring the grantee or transferee to pay the expenses of the Court, direct payment by him to the Treasurer of the Colony of a percentage on the value appraised by the Escheater-General, alone or with an assessor, of 25 per cent. up to £100, and thereafter of 2½ per cent. between £100 and £500, and of 1 per cent. for any excess over £500.

The Carriacou Union (No. 7).—The Carriacou District Ordinance erects that island, which is part of the Colony of Grenada, with the neighbouring isles and islets between Grenada and St. Vincent north of 12° 20′ N. Lat., into a separate district administered by a Commissioner, who is vested with magisterial powers. This appears to be significant of an effort to develop the resources of the island, especially as a cotton-producing area.

Roads (No. 5).—Solicitude for the communications of the Colony is shown by the Roads (Amendment) Ordinance, which, amongst other provisions, prohibits landowners from burning or barking trees within 100 feet of a road; and the St. George's Town Board Ordinance and the Town Boards (Amendment) Ordinance empower the Governor in Council to remove, in case of neglect by town boards, a street from their supervision and control, and to maintain the same at their expense.

Registration of Births and Deaths (No. 11).—This is an elaborate Ordinance for the Registration of Births and Deaths, repealing previous legislation on the subject; and the Deeds and Land Registry Ordinance (No. 14) repeals and re-enacts with amendments the Land Registry Ordinance of 1896.

Taxes (No. 1).—There is also a Taxes Management Ordinance; and of course the usual Appropriation Ordinance with a supplement.

(ii) ST. LUCIA.

[*Contributed by* C. J. TARRING, ESQ., *Ex-Chief Justice of Grenada.*]

Ordinances passed—14.

Carrier Pigeons (No. 1).—No person is, without the consent of the Governor, to keep any carrier pigeons in the Colony. This Ordinance was probably passed in view of the intention, now abandoned, of making the island a *place d'armes* for the West Indies.

Maintenance of Dependent Relatives (No. 4).—Every one who neglects to comply with the obligation imposed upon him or her by the Civil Code of St. Lucia to maintain relatives "in want" is to be deemed a vagrant, idle, or disorderly person within s. 157 of the Criminal Code, and may also be ordered to repay any sum expended from any public or charitable funds in consequence of such neglect, and to pay for the support of such relative a sum not exceeding 40*s.* a week.

Vaccination (No. 5).—This is a supplementary Vaccination Ordinance. A list is to be made out of cases of omission to procure vaccination and is to be submitted to the Chief Office of the Police Force for enquiry and proceedings.

Every public vaccinator is to be entitled to receive from the Treasury 1*s.* for every vaccination which has produced two or three true Jennerian vesicles, and 2*s.* for every vaccination which has produced four or more Jennerian vesicles.

Undesirable Immigrants (No. 6).—This is an Ordinance in pursuance of the now general policy of the nations of excluding undesirable aliens. Infirm paupers or destitute immigrants arriving at the island are to be reported by a Visiting Officer and may be prevented from landing except on entering into a security bond or depositing a sum of £5. If any infirm pauper or destitute immigrant lands, the vessel by which he arrived is to be subject to a maritime lien for £100 in favour of His Majesty. Masters of vessels who knowingly suffer such infirm paupers or destitute immigrants to land are liable to a penalty of £50.

A person believed to be a criminal alien may, on landing, be brought before a magistrate, and failing to satisfy the magistrate that he is not a criminal alien, may be adjudged a "suspected person" and subject to police supervision for a period of five years. If he fails to report himself, he is to be liable to imprisonment for three years.

The Governor in Council may also at any time by Proclamation prohibit the landing in the Colony of any criminal or vicious class of immigrants which he deems likely to prove injurious to the health of the Colony or the property or persons of its inhabitants.

Medical Registration (No. 7).—The Governor may appoint a Medical

Board consisting of three persons practising medicine and surgery by whom certificates under the Ordinance are to be granted. No one is to practise medicine or surgery or dentistry or midwifery, or to be a dispensing druggist, without a certificate of this Board.

A schedule of poisons is added, and provision is made for labelling such articles on a sale.

Druggists guilty of negligence in making up drugs are made liable to a penalty of £5. Druggists' shops may be entered at any time by a Government inspector and examined.

Foreign Marriages (No. 8).—This is an Ordinance to give effect in the Colony to His Majesty's Order in Council under the Foreign Marriage Act, 1892, by which all marriages between parties of whom one at least is a British subject solemnised in the manner in that Act provided in any foreign country before a marriage officer within the meaning of that Act are to be as valid in law as if the same had been solemnised in the United Kingdom with a due observance of all forms required by law.

Post Office (No. 9).—This amends the Post Office Ordinances by authorising the issue in the Colony of Post Office orders and postal orders payable at any post office in the United Kingdom or any neighbouring Colony, and payment of money orders made payable in the Colony. Any post officer who for reward receives, conveys, or delivers any letter otherwise than in the ordinary cause of post or opens or detains any postbag or letter is made liable to two years' imprisonment with or without hard labour.

Registration of Real Rights (No. 10).—Under this Ordinance "all acts *inter vivos* conveying the ownership, *nuda proprietas* or usufruct of an immovable" must be registered at length or by an abstract called a "memorial": in default the title of conveyance cannot be invoked against any third party. Any similar conveyance by will or transmission by succession must also be registered.

Supply (Nos. 11 and 12).—These are Supply Ordinances.

Coroners (No. 13).—This is an amendment of the principal Ordinance. The Registrar of Civil Status and every district registrar upon being informed that any deceased person whose body is within his district was killed or died suddenly or under circumstances of suspicion is at once to report the same to the coroner, and the same duty is imposed on the manager of any estate and the head of any household on or in which any sudden or suspicious death takes place.

Police Pensions (No. 14).—Any non-commissioned officer or private of the police force may be granted by the Governor in Council a pension not to exceed one-third of his pay where he has become incapacitated for service (*a*) from age, after an aggregate continuous service of twenty-one years, (*b*) through disease after twelve years' service, on the certificate of a medical officer.

9. THE LEEWARD ISLANDS.

[*Contributed by* ALEXANDER MANSON, ESQ.]

FEDERAL COLONY OF FIVE PRESIDENCIES.

Acts of the General Legislative Council passed—10.

Bank Holiday (No. 3).—May 24 is established as a Bank Holiday under the Act of 1880.

Cotton Growing (No. 4).—A short Ordinance enabling the Governor to grant advances to owners of land for the encouragement of the cotton-growing industry.

Supply.—No. 5.

Obéah (No. 6).—This Act makes penal *obéah, or sorcery*, including witchcraft and palmistry and allied superstitions and fraudulent practices. Offences under the Act are cognisable by a district magistrate upon complaint. Punishments include fines, imprisonment with or without hard labour, and in some cases whipping (s. 4).

Persons pretending or professing to exercise such supernatural powers are liable to six months' imprisonment (s. 6).

For actually practising these arts all persons concerned are liable to twelve months' imprisonment; and males are also liable to whipping (s. 7).

Persons consulting professors of the craft with intention of employing it for any purpose are liable to fine or imprisonment (s. 8).

District magistrates and justices may upon a sworn information issue search warrants with a view to seizing the instruments used in "obéah" (s. 9). The possessors of such instruments are to be deemed to practise "obéah."

Writing and publication of anything to encourage the practice is made punishable with fine, or imprisonment in default. Police supervision may be ordered in addition to other sentences under the Act (ss. 12, 13).

Turtle (No. 10).—Amends the law for the protection of turtle.

(i) ANTIGUA.

Ordinances passed—10.

Explosives (No. 4).—Volatile petroleum imported for use in scientific work, etc., for use in the manufactures of the Presidency, for motive power, etc., is taken out of the range of the Gunpowder and Petroleum Acts of 1874 and 1889; and Act 9 of 1890 is repealed.

Customs Tariff (No. 5).—Amendments of the Ordinance No. 14 of 1903. This Ordinance is again repealed by No. 10 below.

Barbuda, Management (No. 6).—Barbuda is a small island at some little distance from Antigua; it is Crown property and has a small number of inhabitants.

Powers are given to the Governor in Council to regulate by by-laws a number of matters relating to the good government of this island, including the imposition of licences, rates, taxes, dues and fees; to appoint a manager (whose salary is to be fixed by a resolution of the Council) and other officers if necessary.

Under Part II. the tenure of land is declared a simple tenancy from the Crown, subject to the Governor's by-laws; and building or residing is forbidden elsewhere than within the village limits.

Part III. provides for the manager to divide and allot the lands set apart for the villagers' occupation, to collect the rents, and eject defaulters, in accordance with the Leeward Islands Act 13 of 1891 for summary recovery in the case of small tenements. This part provides also for allotting lands for public purposes, for laying out and altering lines of road, for the regulation of buildings of all sorts, for the assignment of lands outside the village when needed for cultivation, and finally for the regulation of felling timber and burning charcoal. The normal rate of rent is apparently 1*s.* per acre.

Part IV. is for regulating the shooting of deer and other game, and for granting permits. Close times for the wild animals are declared, and the number allowed to be killed in any one year is limited.

Part V. comprises general regulations on tax collecting. The taxes are licence fees for keeping dogs, live-stock, and boats. Pigs must be kept at places outside the village, to be prescribed by the manager—"and any pig found outside such prescribed limits shall be shot or destroyed by the manager, or any person authorised by him."

Part VI. deals with guns, for which permits are required.

Part VII. makes the manager responsible for the roads, the wells, and the enclosures throughout the Island; also for enforcing sanitary regulations.

Part VIII. enacts regulations for the coasting trade. Boats leaving the island for trading purposes must obtain clearance from the manager, and must proceed direct to St. John's in Antigua to the custom-house before going elsewhere.

Part IX. contains provisions for recovery of fines and penalties, for dealing with forfeited goods, for keeping of an account in the Antigua treasury, and some other matters.

Defence Reserve (No. 7).—The Ordinance consolidating the law for a Defence Force was No. 8 of 1903 (noticed at p. 470 of the Journal, No. XIV.). The present Ordinance provides for a voluntary reserve. The qualifications for membership are (1) residence in the town or district, (2) income of £50 per annum (though the Governor has power to dispense with the latter). The Governor, or after formation of a reserve corps its

president, must approve before a member can be enrolled. The president is a member of a corps elected by the rest and approved by the Governor; and the president and some three or more others of the corps elected by the members form a committee with power to make rules—these when approved by the Governor and published in the *Gazette* are legally binding on the members.

The Governor has also powers for making general regulations. Discharges, resignations, and disbanding of the corps, and also the conditions of calling out the reserve for service, are dealt with; and there are minor provisions relating to arms and accoutrements, money matters, and penalties.

Customs Tariff (No. 10).—This Ordinance substitutes a new Customs Tariff for that passed in 1903. Any question whether any imported goods are entitled to come in free must have been referred and decided adversely by the Governor in Council before a right of action can arise.

S. 11 saves the provisions of Act No. 110 (authorising the importation of foreign reprints of books entitled to copyright in the United Kingdom).

In Schedule B, the free list, may be noticed: "Oil to be used as fuel in oil engines."

(ii) DOMINICA.

Ordinances passed—12.

Supply.—Nos. 2 and 4 are Supply.

Fish Protection (No. 3).—The use of poisons or stupefying or intoxicating material or explosives to kill or catch fish is made penal.

Passengers by Sea (No. 5).—Regulating Ordinance. Limits the number of persons which a ship may carry to one for each ton registered: two under the age of twelve are to be reckoned as one. Boats and life-belts or similar articles are to be carried; and powers are given for inspection. The Ordinance does not apply to ships which come under Part III. of the Merchant Shipping Act of 1894 (57 & 58 Vict. c. 60); nor to steamships above 500 tons burden.

Horse Tax (No. 6).—This Ordinance deals with licences for keeping horses. The licence attaches to the horse and not to the owner: so that if the owner sold the horse and bought another, he must hand over the licence to the purchaser of the horse sold, and get a licence for the new one.

Savings Bank (No. 7).—This Ordinance amends the principal Act (2 of 1881). It gives power to make rules, and to change the rate of interest, by Order in Council after due notice.

Tonnage Dues (No. 8).—Exemption is claimable under certain conditions, as for instance where a vessel in distress lands her stores for the purpose of refitting, and takes them on board again.

Fumigation of Plants (No. 9).—Under this name the law deals with the same matter which is being taken care of in several other countries—namely, the prevention of disease in plants under cultivation (see for example Act 67 of 1903 for New Zealand, noticed at p. 388 of last year's Review). The present Dominica Ordinance defines "plants" to include growing plants, cuttings, buds and grafts, bulbs, roots, and seeds, and all fruits and vegetables intended for propagation. All plants entering the Presidency and their packing are liable at the discretion of the agricultural authority to be fumigated, in order to destroy insect and fungoid pests.

Defence Force (No. 10).—**Defence Reserve** (No. 11).—These two Ordinances are similar in character to those passed in other Presidencies of the Colony during 1903 and 1904; and in the Windward Islands also.

(iii) MONTSERRAT.

Ordinances passed—4.

Supply.—No. 2.

Customs Tariff (No. 3).—A new Schedule B is substituted. Oil for fuel is included; and machinery for developing agricultural manufactures, insecticides for plants, etc.

(iv) ST. CHRISTOPHER AND NEVIS.

Ordinances passed—7.

Dog Licences (No. 1).—An amendment of the law of 1899.

Supply.—Nos. 2 and 4 are Supply.

Petroleum (No. 5).—The object of this Ordinance is to empower the Government to regulate the use of petroleum fuel for cotton-spinning machinery. The former law (14 of 1892), which restricted the traffic in petroleum, is modified, and petroleum for fuel in such engines is made free of import duty.

(v) THE VIRGIN ISLANDS.

Ordinances passed—4.

Salt-works (No. 1).—A penalty is imposed on any person entering, or removing salt from, any salt-pond belonging to the Government.

Supply.—Nos. 2 and 3 are Supply Ordinances.

Rewards for Aiding Law (No. 4).—This enables a magistrate to give rewards to persons who help to bring an offender to conviction.

XI. MEDITERRANEAN COLONIES.

[*Contributed by* ALBERT GRAY, ESQ., K.C.]

1. CYPRUS.

Laws passed—14.

Outlawry.—The Outlawry Law of 1895, noticed in our review for that year (Journal, vol. i. No. 1, p. 17), which was limited in its operation to ten years, is now continued for three years more. The offences for which outlawry is proclaimed are murder, robbery with violence, forgery, and other grave offences.

Gambling.—The Gambling Law, 1896 (see Journal, vol. ii. No. 2, p. 149), applied to gambling in open places or places of public resort. Law No. 8 of 1904 takes an important step forward, and renders liable to fine under the law of 1896 any person "found gambling at any game of hazard in any club or society."

Foreign Deserters.—Provision is made for the surrender of deserters from foreign ships. It must, however, be shown to the satisfaction of the High Commissioner that similar facilities would be granted in the country of the flag in the case of British deserters. As will be seen, a similar law has been passed in Southern Nigeria.

Village Roads.—A Law of 1899 (see Journal, N.S. VIII. p. 432) laid upon the able-bodied inhabitants the obligation of contributing annually six days' labour on the roads. Law No. 11 of 1904 now authorises the village authority to apply to be permitted to commute the labour of such individual inhabitant (at his own option) for the current year for a sum of six copper piastres. The village authority may also, if it so prefers, have its labour reckoned by piece-work. This mode was found to be highly successful in regulating the labour required by the village communities' law for the restoration of the village tanks in Ceylon.

Game.—The Game Ordinance of 1879 is amended by Law No. 13. The "beccafico" is no longer protected; but the francolin may not be killed for the next five years. Moreover, no game may be exported for five years. Skins and eggs of birds may not be exported without the special permission of the High Commissioner: it is unlawful to shoot game from shelters (except ducks in lakes), or to make use of decoys. The fee for a game licence is raised by 4*s.*; and the law prescribes by schedule the limits of eight game reserves.

2. GIBRALTAR.

Ordinances passed—3.

Police Offences.—A Summary Jurisdiction Ordinance amends a previous Law of 1885 in some minor particulars. Among new provisions we may note one which prohibits the opening or use of any premises as a club without the permission of the Governor, who may also make rules for the regulation of clubs. Restrictions are also placed upon the sale and use of firearms.

Telegraph Censorship.—Ordinance No. 3 enables the Governor in any emergency to appoint persons to assume the control of the telegraph of any company, or to require the company to submit to them all telegrams tendered for transmission or received by the company, and the censors may stop or delay the transmission of any such telegrams.

3. MALTA.

Ordinances passed—15.

Public Health.—A very useful Law of 195 sections (No. 3) deals with a large number of sanitary matters, adulteration of food and drugs, water supply, markets, etc. The articles of food separately dealt with include flour, meat, milk, butter, eggs, sugar, wines and spirits, and fruit. The provisions are similar to those of our public and local Acts.

Council of Government.—The election of members to serve in the Council of Government is regulated by an Ordinance (No. 7) of some constitutional importance, which repeals five previous Laws. Five Election Commissioners appointed by the Governor have the direction and control of matters connected with the elections. When an election is on foot, the Governor issues a writ to the Commissioners, who thereupon issue a certificate to each elector whose name is registered as a voter. A candidate's nomination paper must be signed by himself and four other electors, and must name the district for which he is nominated. If he is nominated for more than one district, his nomination is void. The poll, which is by ballot, is superintended by Assistant Commissioners. The votes are counted in public by the Commissioners. The provisions as to the poll and counting of the votes seem to be similar to those of our Ballot Act.

Telegraphs.—Provision is made by Ordinance No. 1 for the construction of telegraphs. A licence is required in the first instance; notices must be given, and when the scheme is opposed, the questions at issue are to be decided by a board of three, two appointed by the applicant and opponent respectively, and the third by the Superintendent of Public Works. Provision is also made for the general service of the public, and for the taking over of the wires by the Government in times of emergency.

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NOTES.

"Lord Hobhouse."[1]—The editors are indebted for the following appreciation to Sir Thomas Raleigh, than whom few have had better opportunity of estimating Lord Hobhouse's services:

"Arthur Hobhouse, the youngest child of Mr. Henry Hobhouse of the Home Office, was born in 1819. He was sent to a 'large and rather rough school' at the age of six, and this premature discipline may partly account for the want of physical vigour which compelled him to limit his ambition in after life. He went to Eton at the age of eleven, and to Balliol at eighteen; took his first class in due time; and entered on a four years' course of preparation for the Bar. We should like to have a fuller account of his student life than his biographers have given. He was quick and industrious, but not self-confident, though he did, after careful argument, consider himself equal to the arduous duties of marshal to Mr. Justice Patteson. Called to the Bar in 1845, he obtained an excellent Chancery practice; took silk in 1862, and became one of the leaders in the Rolls Court; but a serious illness led him to give up his prospects of professional success. In 1866 he left the Bar and became a Charity Commissioner. During this earlier period of his life, he counted himself a Conservative, and looked to Sir Robert Peel as his leader. In 1847 he thought a French invasion more than likely, and joined, or wished to join, a volunteer corps; and he served as a special constable on the famous tenth of April, 1848.

"At the Charity Commission, Hobhouse proved himself a conscientious and fearless official; and it fell to his lot to take a leading part in administering the Endowed Schools Act of 1869. He accepted this task with reluctance, for he knew that the Act was in advance of public sentiment, and thought it might have been preceded by a period of preparatory effort. Even so, Lord Davey is able to testify that the work done was 'of a public utility which it is almost impossible to exaggerate.' In fighting the battle of popular education, Hobhouse became a decided Liberal. With him, as with many others at that time, admiration of Mr. Gladstone and want of confidence in Mr. Disraeli may have counted for much. To the end of his life Lord Hobhouse was an academic Liberal; he was never a democrat; for him, as for his illustrious chief, socialism had no attractions.

[1] A Memoir: by L. T. Hobhouse and J. L. Hammond. London: Edward Arnold, 1905.

He often found himself one of a small minority; but he retained his belief in the intelligence and capacity developed by popular institutions.

"In 1872 Mr. Hobhouse succeeded Sir J. F. Stephen as Legal Member of the Supreme Council in India. His friend Coleridge, reasoning from the single instance of Macaulay, assured him that he would have plenty of time for general reading. But Macaulay left India in 1838, and in the interval the Government of India had been remodelled. The Law Member had become a member of the Executive Council, bound to take part in the decision of important questions of policy; he had also become the head of a department which dispenses legal advice and assistance to all the other departments of Government. Mr. Hobhouse spoke of the 'streams of papers' flowing through his office; he certainly spared no pains to keep himself abreast of the current. As a legislator he was less conspicuous than some of his predecessors: perhaps the best example of his work is the Specific Relief Act of 1877, a measure which could only have been drafted by a master of equity procedure. In matters of policy he was of one mind with Lord Northbrook. With Lord Lytton his personal relations were friendly; but Hobhouse sided with the minority in Council who protested, strenuously but vainly, against the policy pursued by that Viceroy in Afghanistan and elsewhere. On the Afghan question he was in agreement with Sir W. Muir and Sir Henry Norman: the event showed that the minority had good reason for their opinion. The grave events of 1876-7 weighed heavily on Mr. Hobhouse's mind, and prevented him from enjoying the social pleasures of Anglo-Indian existence. His old-fashioned courtesy was not in keeping with the easy manners of the new *régime*. He was understood to have hardly any amusements; and Simla wondered how he got through the day.

"Returning to England in 1877, Sir Arthur Hobhouse had to face the discomforts of the position which the wisdom of the British Government has created for those who have held high office in India. His services were duly acknowledged; unpaid work was thrust upon him, up to and beyond the limits of his strength. He was not rich; and he would have been content to serve the public as a County-Court judge or in his old place at the Charity Commission; but his five years in Council had placed him either above or beneath the consideration of the higher powers. In 1881 he became an unpaid member of the Judicial Committee of the Privy Council, and in 1885 Lord Selborne recommended him for a peerage. He was not at that time qualified to take part in the judicial business of the House; but in 1887 members of the Judicial Committee were recognised by Parliament as persons holding high judicial office.

"In the House of Lords, Lord Hobhouse did not often attend, and his work there hardly calls for comment. He was one of the most assiduous, and certainly one of the most useful, members of the Judicial Committee. Lawyers will understand the significance of the record which shows that

he delivered the judgment of the Board on one hundred and twenty appeals from India, and on eighty from other parts of the Empire. Counsel were always glad to see him in the corner near the bar which his deafness led him to choose for his own; for his patience and courtesy were unfailing. He was slow to make up his mind, but, when his opinion was formed, he was seldom or never induced to alter it. His experience as a draftsman enabled him to work out the principle of a judgment, applying it to all the details of a complicated case. From the registrar's point of view he was a model judge. At the same time, his statements of general principles were not lacking in broad wisdom: a good illustration of his method is furnished by the judgment which settled the Hindu law in regard to the adoption of an only son. The rule of interpretation which our Courts apply to the sacred books is stated there in language which could hardly be improved.

"Lord Hobhouse gave the best of his mind to his judicial duties; he was also active in the work of political and social reform. He was for many years a vestryman in St. George's, Hanover Square; and the London County Council made him an alderman. Many good schemes, and some that were not so good, have profited by his unwearying diligence. He returned from India a strong opponent of Imperialism, and was always ready to take alarm when British authorities were pursuing what seemed to him an aggressive policy. His private letters are full of anxious forebodings. In the policy of Lord Beaconsfield and Mr. Chamberlain he discerned only a 'passionate reflux into barbarism'; he came to believe that the bulk of the English nation had lost all sense of right and justice; he wished to recall the public mind to the sounder ideals of the early Victorian era. Lord Hobhouse was, in short, a good party man, and, where his opponents were concerned, his temper was not always judicial. He was, for example, much too ready to associate himself with charges of misconduct against British officers. The authors of this volume have given us the Memorial of 1880, in which *ex parte* charges were made against our troops in Afghanistan; they have also, quite fairly, subjoined Lord Roberts's reply, which closed the discussion, and left the memorialists, of whom Lord Hobhouse was one, in a somewhat undignified position. It is hardly necessary to revive the history of the Concentration Camps in South Africa; but the mere lawyer may be allowed to note that Lord Hobhouse's rhetorical attack on martial law does not help to elucidate the constitutional question at issue.

"We may, or may not, agree with Lord Hobhouse the politician, but our estimate of what he did or said in that capacity does not in the least affect our admiration for his judicial qualities, or our regard for him as a man. By his own profession he will long be remembered for the part he took in dispensing justice to the Queen's subjects beyond seas; are not these things written in the books of the Appeal Cases? But those who enjoyed the privilege of his friendship will miss him most; and the authors

of this book have earned the gratitude of many who remember Lord Hobhouse for his unvarying kindness to all who sought his help; for his amiable obstinacy in defending his own opinions; for his constant love of letters; and for his thoughtful outlook on the problems of life and death."

Statistics of Unemployment.—The following series of questions on the subject of unemployment, for which the editors are mainly indebted to Mr. C. Waley Cohen, have been approved by the Local Government Board, and the editors will be greatly obliged to any local branch of the Society, State Department, or any readers of the Journal who will kindly supply information on the subject with a view to its being collated and tabulated for the use of the Local Government Board.

Enquiries as to the mode of dealing with the Unemployed in various Countries.

1. What is the proportion of unemployed to the general population? What is the proportion of men and of women among the unemployed?

2. What method is adopted for discovering the extent of unemployment—*e.g.* trades unions returns or employers' associations, or relief bodies?

3. Of what elements does the class of unemployed consist?

4. To what extent is unemployment attributable to (*a*) intemperance, (*b*) unfitness, physical or mental, (*c*) other causes?

5. To what extent does the employment of women and children tend to increase the number of unemployed workmen?

6. What regulations or enactments are enforced for the purpose of classifying applicants for employment or relief? Are the powers for dealing with deserving and undeserving, competent and incompetent, vested in the same body? If not, what method of classification is adopted and how is it enforced? How is overlapping avoided? Is there any disciplinary power or power of detention in the case (1) of wastrels, (2) of incompetents, (3) of persons making a false statement in answer to enquiry of official administering the enactment?

7. What methods are adopted for the relief of the unemployed?

8. (1) Is any obligation on the part of the State to provide work for the unemployed (*droit du travail*) recognised?

(2) Is any right recognised on the part of the body giving relief to exact labour in return?

(3) Is there any right to force persons found begging to perform particular work and earn a living?

9. What powers are for this purpose of relief vested in (1) municipal, (2) provincial, (3) other local bodies? Is the cost to be borne (*a*) by philanthropic or voluntary, (*b*) by enforced contribution, (α) local taxation, (β) national taxation?

10. What provisions exist empowering the raising of loans for works of public utility to give employment during periods of slackness? [Such action would seem particularly desirable in cases of land reclamation, works of protection against encroachments of the sea, and levelling and making of roads, where the increment resulting from the labour will eventually recoup the expenditure.] Is the burden of the loan (*a*) local, (*b*) national?

11. Is any residential qualification required of persons applying for employment or assistance? [Cp. Unemployed Workmen's Act, 1905, s. 1 (2), in reference to London.] If so, is the qualification (*a*) one of domicile, (*b*) one of continuous residence, (*c*) one of residence of dependents? Is any modification introduced to meet the case of soldiers or sailors recently out of the army, and sailors from the mercantile marine?

12. Is there any regulation or enactment governing the wages to be paid for relief work? What measures are taken to prevent labour drifting from badly paid employment with private individuals to State or relief employment at a "living wage"?

13. What provisions are taken to prevent the competition of the State as a producer or contractor, and the employment of State capital with the individual contractor and the employment of individual capital?

14. What provisions exist for the making of loans or grants,

(1) for the encouragement of labour registries or exchanges;

(2) for the assistance of labour to migrate from districts where it is not in demand to districts where it is in demand, (*a*) within the State, (*b*) without the State—*i.e.* in foreign countries?

15. Has any system of labour farms or colonies been tried, and, if so, with what success?

16. To what extent is emigration in use as a mode of relief?

17. Does any enactment empower the granting of money to private employers, or the loan of money to private employers at a rate below that which they could borrow in the open market, in order to foster employment, where the lack of employment is due mainly to the high rate charged for borrowed money? [*E.g.* the building trade at present is almost the only relic of the past period of depression. This is due to the absence of money in the market.]

18. What provisions are there rendering penal (1) vagrancy, (2) begging, (3) casuals tramping from one district to another?

19. Are the unemployed permitted to demonstrate?

20. Is there any provision (1) for co-ordinating private and public relief, (2) for registration of private relief organisations?

21. Is there any provision in the national system of education for teaching every child a trade or occupation which will enable him or her to earn a livelihood?

22. What family obligations to help exist?

English Law for Germany.—Some time ago the Berlin "Society for

Comparative Jurisprudence and Political Economy" conceived the idea of a series of Handbooks on the different legal systems of modern civilised communities modelled on the pattern of the German Civil Code. The idea was an excellent one, and is now being carried out—so far as England is concerned—under the editorship of Mr. Edward Jenks and a band of learned Oxford colleagues. It would have been a great loss to many English lawyers if the contribution had remained entombed in German, and Mr. Jenks and his colleagues have done a real service by publishing an English version under the title of *A Digest of English Civil Law*. When completed the work will be in five Books: Bk. I. being General (E. Jenks); Bk. II. dealing with Obligations (R. W. Lee); Bk. III. with Things (Property Law) (E. Jenks); Bk. IV. with Family Law (W. M. Geldart); Bk. V. with Succession (W. S. Holdsworth). The present volume comprises Bk. I.; and though only a fragment, we may say of it "Ex pede, Herculem." It formulates a series of general propositions of law relating to Persons, natural and artificial, to Things, to Legal Acts, to Time, to the Limitation of Actions, and to Self-help. Each proposition is the result of careful consideration and discussion by all the contributors and has their joint imprimatur. It is fortified by citation of cases and statutory enactments. The book does not—it need hardly be said—attempt to illustrate all the infinite varieties of application of each rule: that would have been a vast labour. The merit of the work is that it is the first attempt by a body of accomplished lawyers to deal scientifically with the whole domain of English law—to present it, or the outline of it—in a logical and consistent shape, and in doing this Mr. Jenks and his colleagues have made Englishmen their debtors.

Arbitration Awards and their Enforcement.—We quote from *The American Law Review* some interesting remarks made on this subject by Mr. Justice Brewer, of the Supreme Court of the United States, at the Mohonk Lake Conference on International Arbitration:

> We have had our attention called (said the learned judge), to the number of arbitrations—two hundred and more, I think Dr. Trueblood said—which have taken place between the nations within the last century. I wish to dwell a little upon the fact that in no one of those arbitrations was there a repudiation of the award given by the arbitrators. Whether the award was bitterly resented or partially acceptable, no nation has ever repudiated an award made by arbitrators within the last century. I remember having a conversation, when I was across the waters, with Lord Russell. You know the English were never satisfied with the award in the Geneva Arbitration, when fifteen millions and more were given us for the direct injury to our shipping and our insurance companies, and not half of it, or at least not all of it, was used, as they thought, for the payment of those claims. He said: "What are your United States going to do with the balance of that money which was obtained under the Geneva award? It was given to them for the direct injury, and they have not been able to find persons who were directly injured by the Confederate cruisers having claims enough to absorb the amount." Well, of course a very natural suggestion was

that we could use a great deal of it in paying that extravagant award in the fisheries dispute! The point I am making is that the award of arbitrators carries the public opinion of the world to support it, and as long as this is so, no nation will dare resist the decision of a tribunal which has been fairly constituted to settle claims between themselves. Why, within our own limits I remember a year or so ago the Supreme Court of the United States decided a case in favour of the State of South Dakota against the State of North Carolina, and awarded a large sum of money. There was a grievous and earnest protest that the Court did not have jurisdiction over that controversy. But the decree was made, and on the last day the Attorney-General of North Carolina came and paid the money into Court and settled the judgment. There was no humiliation in that act on the part of the sovereign State of North Carolina because there was no exercise of power to compel that payment; it was voluntarily done. When you talk about power to execute a decree, the executive officer of the Supreme Court of the United States is a very small man, and he has as an assistant only a woman, and those two are supposed to execute the decrees of that Court through all this people of eighty millions. It is true, of course, that there is something back of that Court which is not back of an arbitration tribunal. An amusing thing took place in Washington in connection with the Supreme Court last winter. A young man in the court-room was talking aloud, making a little confusion. One of the old coloured bailiffs that we have there went and led him out, saying: "Young man, you want to come out and be still. That is the Supreme Court of the United States in there, and if they get after you, nobody in the world can help you, except the Almighty, and the chances are that He won't interfere!" There is, as I say, back of the Supreme Court, something which is not back of the award of arbitrators between nations. There is back of it, as every one knows, the organised power of eighty millions of people, and, if need be, there is force—all the force of the nation, to compel obedience to its judgment. There is no power of this kind back of the award of arbitrators, and it is that which is liable to occasion trouble in the future. Take The Hague Convention. That, as has been said over and over again, stands as an epoch-making event in the history of international arbitration. And yet it provides for no power to compel obedience; it recommends only. Our good friend, Dr. Edward Everett Hale, who is not here to-night, told us years ago, in that story which rang through all the country, of the terrible position of a man without a country. Now, if the nations in the coming conference at The Hague, or in coming conferences, shall agree that any nation which refuses to enter into arbitration with a nation with which it has a dispute, or which refuses to abide by the award of the arbitrators selected in accordance with the provisions of The Hague Convention, or some other convention, shall be isolated from all intercourse with and recognition by any nation on the face of the earth, can you imagine any compulsion which would be more real and peremptory than that? Take Germany, for instance, which stands up as perhaps the great military Power of the world. If all other civilised nations would say, "From this time forward, until you submit the dispute with France to arbitration, we will withdraw all our diplomatic representatives, we will have no official communication with your citizens, we will forbid our citizens from having any business transaction with your citizens, we will forbid your citizens from coming into our territory, we will make you a Robinson Crusoe on a desolate island." There is no nation, however mighty, that could endure such an isolation, such an outlawry as that would be. The business interests of the nation would compel the Government to recede from its position and no longer

remain an outlaw on the face of the globe. Such a procedure would involve no military force, no bloodshed on the part of the other nations. The military force the only bloodshed that might follow, would be in case the nation thus outlawed attempted to attack some of the other nations, when they would all unite in resisting it. The very fact that it was outlawed would place it in a position where it would have to submit; it would be compulsion, as real as the compulsion of a marshal with a writ in his hands. You will say, naturally: Supposing that, after a stipulation has been signed by the civilised nations, a contingency should arise and one nation should refuse to enter into arbitration and should be outlawed by the others, the sympathies or interests of one of the other nations would be so strongly on the side of the outlawed nation that it would refuse to join with the rest in the outlawry. That would add another nation to the condition of the outlawed. In some such way as this the force which stands back of the Court within a nation might possibly be exercised by the nations upon any nation that refused to enter into arbitration or abide by its decisions.

The Guaha Custom in Akwapim.—The following interesting memorandum as to the native customary law of sale of land in Akwapim has been furnished by His Honour the Chief Justice of the Gold Coast:

In the case of *Akiempong* v. *Kojoko and others*, heard at Accra on May 2, 1904, the following evidence was given with respect to the Guaha customs by Thomas Martin Adade, an educated man and Chief Councillor to the Omanhene of Akwapin. He added that the last occasion on which he had seen the custom performed was two years prior to his giving evidence.

By the strict native law of Akwapim before a sale of land is complete the Guaha custom should be performed. The procedure is as follows: The vendor and purchaser each procure sureties. The purchaser provides twenty-five strings of cowries; these are placed on the ground. The "linguist" in the matter—that is, the person who acts as intermediary between vendor and purchaser—picks out six cowries, makes a hole through each and puts them on a string. Each of the sureties holds three of the stringed cowries whilst the "linguist" makes an oath that if the vendor wilfully comes back and takes his land he will have to pay double the purchase-money, and that if the purchaser refuses to complete the purchase any money already paid will be repaid to him but without interest or expenses. The sureties then pull the cowries apart till the string breaks.

The remaining cowries are divided between the sureties as a reward for their trouble. A sheep, provided by the purchaser, is killed and divided amongst the actors in the transaction and the witnesses, the purchaser receiving the head and a piece of the loin and the skin.

The holed cowries are kept, in testimony of the transaction, and are not infrequently placed in the stool of the purchaser.

Until this custom is performed the sale is not complete.

Here we have an illustration of what Sir Henry Maine and other investigators have often pointed out, that simplicity is not an attribute of primitive law. The Guaha mode of "completion" transferred to Bedford Row would be found extremely inconvenient.

The Treatment of Inebriates.—A series of interesting articles on

Habitual Inebriates at Home, in the Colonies, and in Foreign Countries, contributed by Mr. T. R. Bridgwater to a contemporary, witnesses to the world-wide crusade now being waged against intemperance. The conscience of the nations on this subject seems to have awakened only within the last fifty years. True there was an Act of James I. (1 Jac. I. c. 9), "to restrain the inordinate haunting and tippling in inns, alehouses, and other victualling houses," but as Mr. Bridgwater points out, it was directed rather against disorderliness than drunkenness. It was not until 1872 that we had in England, in the Licensing Act of 1872, legislation dealing with drunkenness as such. Once begun, however, legislation has been active; witness the Habitual Drunkards Act, 1879, the Prevention of Cruelty to Children Act, 1894 (s. 11), the Inebriates Act, 1898, and the Licensing Act, 1902, and it is not likely that the chapter is yet closed. The plan of forbidding the sale of liquor to inebriates—familiarly known with us as "blacklisting"—has been widely adopted of recent years in Canada—by British Columbia, Ontario, New Brunswick, Manitoba, the North-West Territories, Prince Edward Island, and Newfoundland—and in Australia. Australian legislation on the subject starts in 1851. In that year New South Wales began by treating inebriates as vagrants, then went on fifteen years later to fine them, "blacklisted" them in 1898, and in 1900 passed an Act for the care, control, and treatment of them. Victoria deals with inebriates in very much the same way as with lunatics. "Blacklisting" is adopted in Victoria, Queensland, Western Australia, South Australia, and Tasmania, and all have institutions for inebriates. The West Indies have not yet, it would seem, adopted any curative treatment for inebriates. The Ordinances deal with drunkenness and disorderly conduct. The Cape and Natal have their interdictory or "blacklisting" methods, and the Cape its Inebriates Act (1896). The Eastern Colonies—Ceylon, Hongkong, and Mauritius—the Gold Coast, Lagos, and the Mediterranean Colonies—Gibraltar, Malta, and Cyprus—have at present adopted no curative treatment. Nor has India adopted any.

State legislation on the subject in the United States is very various, ranging from the adoption of the vagrancy view to establishing dipsomaniac institutions. In France drunkenness in public is punished under the Penal Code with fine and imprisonment. A second offence disqualifies a citizen from voting. Parents may forfeit their parental rights by habitual drunkenness. In Germany inebriates may be put under guardianship. In Switzerland they may be sent to industrial institutions. Belgium and Holland, Sweden and Norway, have only as yet the ordinary police laws against drunkenness, and Denmark seems still as tolerant of "the heavy-headed revel" as in Hamlet's day. Spain, Portugal, Russia, and Greece treat inebriety as a breach of public order rather than as a national disease and peril. It is thus, it would seem, the younger nations of the world which are most alive to the evil and are doing their best to grapple with it.

Each has its special methods—noted by Mr. Bridgwater—but there is in all a strong resemblance in the general lines of legislative policy. It has passed from the repressive to the remedial stage; it goes to the root of the evil; and it inspires the hope of a great reformation in the near future, in a matter which vitally concerns the welfare and happiness of every nation.

The Multiplication of Undischarged Bankrupts.—The latest Bankruptcy Report reveals the startling fact that whereas there have been some 89,583 adjudications in all since the Act of 1883 was passed, in only 19,136 of them has there been an application for discharge: in other words, not one debtor in five applies for his discharge, and even this low average is steadily falling. The result is that we have a population of some 70,000 undischarged bankrupts in our midst—a manifest danger to the trading community: for though it is a misdemeanour for an undischarged bankrupt to obtain credit to the amount of £20 without disclosing his status, a penal provision of this kind affords no redress to a person who knowingly or unknowingly has given credit to an undischarged bankrupt. Nor is it any use to drive such an undischarged bankrupt into a second bankruptcy; because the trustee under the first bankruptcy—unless he has known of the trading without intervening—has a prior claim on the assets. The mischief arises from an oversight in the drafting of our English Bankruptcy Acts: the application by a debtor for his discharge is made optional when it ought to be obligatory. In this respect we may learn a lesson from our own Colonies. In New South Wales, if a bankrupt does not apply for his discharge within nine months of his sequestration, he may be summoned before the Court to show cause why he has not applied, and dealt with accordingly. A similar power exists in Victoria. In New Zealand a bankrupt is bound to apply for his discharge within four months of adjudication on peril of committal for trial for contempt of Court, and some such provision will have to be inserted in the English Bankruptcy Acts. Left to himself, a bankrupt—especially a bankrupt with a past—finds it much more easy and agreeable to do nothing than to face the public ordeal of an application for discharge, the official receiver's unpleasant comments, and the Court's censure.

Mr. Haldane on an Imperial Intelligence Department.—If Imperial conferences are to be fruitful, they must be furnished for their work with information well verified and well digested. That is the view of Mr. Haldane, and it corresponds with the suggestions of Sir Frederick Pollock and Mr. Alfred Lyttelton for the creation of a permanent Commission for Imperial Intelligence. Referring in one of his election speeches to our relations with the Colonies, Mr. Haldane declared that if he had his way they would have a department of Government in which information about the common business of the Empire should be continuously collected, and questions investigated pending their examination from time to time by those Imperial conferences which

they wished to develop and increase both in number and magnitude, because they felt these conferences were the true places where questions of the Empire could be thought of and thrashed out, and where the proper view of these matters could be evolved. In that they had the real and true method of Imperial Federation. If that term was to have any meaning, it was a federation which came, not from trying to split up government, or trying to clamp the Colonies together in any rigid bonds, but a federation of common interest, common purpose, and common traditions, of the working of Governments charged with Imperial as well as local interests under the central Government, which was the chief exponent of them all. If they wanted to break up the Empire, they could not do anything more calculated to effect their purpose than the process of tying people together whose essence was liberty, whose aspirations were liberty, and who did not wish to be held together by any galling fetters. Perhaps, with Mr. Haldane in the Government, we may hope that the scheme will take definite shape.

Examination of "Pardanashin" Ladies.—In a recent number of *The Criminal Law Journal of India* is an illustration of the difficulty of applying a system framed with an eye to one state of society to another state. The Code of Criminal Procedure, s. 503, provides for the issue of a commission to take evidence when the examination of a witness is necessary for the ends of justice and such attendance "cannot be procured without an unreasonable amount of delay, expense, or inconvenience." The commission goes to any district magistrate or magistrate of the first class. How apply this provision to the case of *pardanashin* ladies—that is, ladies who according to the customs and manners of the country do not appear in public? If it does not extend to them, and they may be compelled to attend in court, there is an obvious means of extortion and oppression; and if they are the victims of a crime, it may be hushed up because of their aversion to appear in court. "Other cases," says the writer of an article on this subject, "have come to my notice in which the accused cites the ladies of the complainant's family as witnesses for the defence. This trick is played to press the complainant to withdraw the charge." Other "cases very often arise in which complainants institute false complaints with the real object of extorting something from the accused. The safest and surest method of accomplishing their object is to place the scene of offence inside the house of the accused, where only the ladies of the family are naturally expected to be present, and cite the ladies of the accused's family as witnesses for the prosecution." We need not refer to the various decisions in which this section has been considered and the expedients by which Courts have endeavoured to enlarge the word "inconvenience," or to give effect to the section without wounding the feelings of *pardanashin* ladies and their husbands. Probably it will be agreed that the framers of the law were not familiar

with the customs and ideas of Hindus and Mohammedans, or did not foresee the full consequences of their words.

Contributory Damage.—Suppose that a workman is injured under circumstances which entitle him to damages from his employer, and that, proper skilful treatment for the injury which he has sustained being available, he chooses to make use of unprofessional treatment, so that the injury is aggravated, could his damages extend to the injury thus aggravated? Such were the facts in *Vinet* v. *The King*, which came lately before the Exchequer Court in Canada. The workman had sustained a fracture of the thigh with other injuries. He did not go to a regular doctor, but to a bone-setter (*rebouteur*). The broken limb does not seem to have been properly attended to, with the result that he was much more injured than he need have been. The Court held that the damages must be confined to the natural and ordinary effects of the accident. We do not question this decision, which accords with well-known principles. But it suggests some nice questions only partly covered by decisions. Suppose that the injuries had been internal, and within the province of a physician, what if the injured person had consulted a homœopath, or refused to go to a specialist but went to the family doctor? Or suppose that the cause of action was the contracting of small-pox and it was proved that the plaintiff had obstinately refused to be vaccinated?

British Jurisdiction in Indian Protected States.—Two cases which recently came before the Judicial Committee of the Privy Council raised some very important questions with respect to the jurisdiction of British authorities in the protected Native States of India. The two cases, both of which related to cases arising in the petty States of Kathiawar, were dealt with together, and the judgment of the Committee was delivered by Sir Arthur Watson on December 20, 1905. The judgment enters fully into the history of the relations—long a subject of controversy—which have from time to time existed between the States of Kathiawar on the one hand, and the East India Company and their successors—the Government of India—on the other, and deserves careful study. The main points decided were (1) that the States of Kathiawar do not form part of the territory of British India; (2) that in cases where a British Court exercises jurisdiction outside British territory the right of appeal is not confined to British subjects, but (3) that in both of these two particular cases then before the Judicial Committee, the jurisdiction exercised was rather of a political than of a civil or judicial nature, that the decision was based on political or diplomatic grounds, and that in such cases the Judicial Committee would not entertain an appeal.

Revision of the Quebec Civil Code.—Happy Province of Quebec! Mr. McGibbon, K.C., a distinguished member of the Montreal Bar, tells us, in *The Canadian Law Review*, that after an experience of nearly thirty years at the Bar he is more than ever convinced that they have in Quebec

on the whole "a body of laws, civil, commercial, and criminal, that are unsurpassed by those of any other country." But even in Utopia time moves and changes come, and the ideal system needs readjusting to the new conditions. So Quebec must revise its Civil Code from time to time. But how is it best to be done? Mr. McGibbon has not much faith in the law-reforming capabilities of Parliaments. He sympathises with the mocking exclamation of Professor Laznaude: "Concevons qu'on confierait une réparation d'automobile Mors ou Mercèdes à un forgeron de village!" The work, if it is to be done, should be done, in his opinion, not by an annual tinkering on the part of the Legislature, but by a well-considered and well-concerted effort based on full discussion by lawyers of all classes—judges, jurisconsults, publicists, and notaries. Why, for instance, should not suggestions for amendment be invited by the Bar Association from these different bodies, the suggestions collated by a standing committee, and the result presented to the Association in the form of a Report; sub-committees formed to deal with special subjects, and in this way the materials provided for a Government Commission preparing a well-matured Act of Revision to be submitted to the Legislature. Judge-made law is always preferable to what Lord Campbell called "the crude enactments of the Legislature." Mr. McGibbon's plan would give us the advantages of both.

The Mohammedan Law of Divorce.—Somewhat more than one interesting question of Mohammedan law seems to be involved in the decision of the Bombay High Court in *Sarabai* v. *Rabiabai* (8 Bombay Law Reports 35). It suggests that influences which affect other systems of jurisprudence are operating upon some of the stablest parts of Mohammedan law. One Kadji Adam Sidick had married the plaintiff. On the death of the former she brought a suit for maintenance and residence as his widow against the defendants, a widow and daughter and the executors appointed by the will of the deceased. They resisted the claim on the ground that he had validly divorced Sarabai. To this it was answered (1) that the usual words had not been pronounced; (2) that the pronouncement was not communicated to the wife; (3) that there were not three separate pronouncements, as is usual, but only one. All these points the Court overruled. "The Mohammedan law looks to the intention when accompanied by a reasonably plain expression of it," said Batchelor J. Then it was urged that the "bill of divorce" was bad because given when the husband was in *marz-ul-maut*, or death sickness. This point, too, was overruled. Mohammedan law has run riot in subtleties as to what is *marz-ul-maut*. But, on the whole, it clings to the idea of apprehension of immediate death, which did not exist in this case. We are not questioning the decision—which it is instructive to compare with a decision of the Bengal High Court upon a somewhat similar point in 1879—in saying that it seems strange that it should be left to English lawyers to carry to its

full logical result to Mohammedan law of divorce with its marvellous laxity, according to English standards—a law which treats as valid pronouncements of divorce made under compulsion or in a state of intoxication.

The Workmen's Compensation Act in our Colonies.—It is well known that most of our Colonies have adopted the principle of the Workmen's Compensation Act. Most of them have copied the English statute without any change. But in New South Wales a somewhat different course has been followed. Here one of two ways of determining a claim may be adopted: it may be referred to an Arbitration Court, or it may be settled by the judge. Mr. Levy, who introduced the New South Wales bill in a singularly lucid speech, explained why he adopted a simpler procedure; all cases are to go to the district judge to be determined by him without a jury.

Turkish Divorces.—The German Courts have lately had to consider the question of the validity of a Turkish divorce pronounced in these circumstances: a German subject goes to Constantinople, there becomes a Mussulman, and is naturalised as a Turkish subject. Constantinople becomes his domicile, and there is no question of naturalisation in *fraudem legis*. Originally married in Germany according to the Lutheran rites, he divorced his wife according to Turkish law, and married again. The Court below laid down a clear principle: the marriage was originally monogamic, and could not be changed by the act of the husband into a relation which it depended upon his free will to continue or not. The Court above put it on a narrower ground. It laid stress on the circumstance that the wife was in German territory at the time of the alleged pronouncement, and that the "bill of divorce" was sent through the post to Berlin; the transaction was in part in German territory.

Property found on Board Ship.—A nice point as to the ownership of lost property came before the German Courts lately. According to the report in the *Zeitschrift für Internationales Privatrecht* (xv. 313), a seaman on the steamship *Normannia*, belonging to the German Hamburg-America Line, found in a berth a purse with $90 in it. He handed the money to the head steward, and it was forwarded to the office of the company in Hamburg. The finder brought suit for the money. His claim was rejected by the first Court, but was upheld on appeal. The ground of decision was that the right of possession and property in movables is determined by the law of the place. The vessel had cast loose from the wharf at New York, and had begun her homeward voyage, but she was still in the harbour of New York when the money was found, *i.e.* either within the State of New York or New Jersey. Now, according to the laws of these States, the finder's title is good against all but the owner; a decision which carries conviction.

Sir F. Pollock's Notes on Maine.—Genius is a deeper insight into man, nature, and the divine than is vouchsafed to ordinary mortals; and it is this gift of superior insight—insight into the origin of legal ideas and legal

institutions—which gives such a value to Maine's work. His *Ancient Law* is the miracle of the valley of dry bones in the vision of Ezekiel. It reanimates the past, it opens a veritable new world. Such a book must be left in its unique excellence as a classic text; but Sir Frederick Pollock has made all lawyers, and indeed all laymen, his debtors by his Notes showing what study and research have since done in the same field. The wonder is, as Sir Frederick remarks, that Maine's speculations, after more than a generation, stand in need of so little correction. His leading ideas have, in fact, been confirmed in the most striking manner. The Notes are, all of them, illuminating; but perhaps the most interesting are those on the "Patriarchal Theory" and the "Law of Nature." On the former question Sir Frederick's conclusion, which is also Ihering's, is that the Indo-European race may have gone through a stage of matriarchy at some remote time, but at any rate it was before the great migration which dispersed the several branches. The evidence goes to show that the maternal family system gives way when it comes in contact with paternal families—the natural predominance of the husband asserting itself. On the Law of Nature Maine stopped at the classical theory. Sir Frederick pursues its mediæval and modern history and shows how the canonists and schoolmen identified the law of Nature with the Law of God revealed in human reason. This identification has been pregnant with significance to modern law in developing the doctrine of reasonableness.

Dr. A. H. J. Greenidge.—The Editors are indebted for this notice to Mr. R. W. Lee, of Worcester College:

"Jurisprudence and scholarship sustained a loss in the sudden death on March 11 at the early age of forty of Dr. A. H. J. Greenidge, Fellow and Lecturer of St. John's College, Oxford. Dr. Greenidge was the second son of the late Rev. N. H. Greenidge, of Barbados. From Harrison College, Barbados, he came up to Balliol in October, 1884. He was elected to a classical exhibition in the following year. He obtained a first class in Classical Moderations in 1886, and a first class in Literæ Humaniores in 1888. In the following year he was elected to a fellowship at Hertford, which he vacated upon his marriage in 1895, retaining, however, his tutorship. He was for many years Lecturer in Ancient History at Brasenose College. Only last year he was appointed to a fellowship at St. John's.

"Dr. Greenidge's work lay in the sphere of Greek and Roman constitutional history, from which he was led on to make a minute study of some departments of the Civil Law. His erudition and conscientious devotion to the pursuit of truth are known and appreciated by the readers of his published works. The list of these comprises, besides numerous contributions to history and antiquities, two works on Roman law. The first was published by the Clarendon Press in 1894, under the title *Infamia, its Place in Roman Public and Private Law.* The second, issued from

the Clarendon Press in 1901, is *The Legal Procedure of Cicero's Time*. This last-named work is a masterly attempt to present a complete picture of the civil and criminal procedure of the last days of the Republic by the aid of the indications afforded by Cicero's speeches as interpreted by the fuller information supplied by the classical jurists.

"In 1904 Dr. Greenidge supplied an historical introduction to Mr. E. A. Whittuck's edition of Poste's Gaius. The *English Historical Review* for January of last year contains a valuable article by Dr. Greenidge upon the Twelve Tables. In this he examines and dissents from the views of such scholars as Ettore Pais and Edouard Lambert, who have attempted to depose the work of the decemvirs from its traditional position as the *fons publici privatique juris* by proving it and them to be the figment of a later age. At the time of his death Dr. Greenidge was engaged upon a history of Rome during the late republic and early principate, which was to be comprised in six volumes and end with the accession of Vespasian. The first volume, dealing with the years B.C. 133-104, was published by Methuen in 1904. Dr. Greenidge's memory will be cherished by his many friends and former pupils."

Marriage after Adultery.—The Editors have received through the kindness of the Attorney-General of Ceylon reports of several very interesting cases recently before the Courts there. One of these, *Karonchihamy* v. *Angohamy*, raised the question whether it is legal in Ceylon for a man who has lived in adultery with a woman during the lifetime of his wife to marry such woman after the death of his wife. By Roman law no marriage could take place *inter adulterum et adulteram*, but, as Voet points out, such marriages were confirmed by the canon law so long as there had been during the lifetime of an innocent spouse no promise of marriage—*fides matrimonii contrahendi*—between the adulterous persons, and those persons had done nothing towards compassing the death of innocent spouses. By a Placaat of 1674 of the States of Holland this conditional sanction was abolished and such marriages prohibited absolutely; but this Placaat was enacted subsequently to the settlement of the Dutch in Ceylon. Hence the controversy in the case.

"It is of course true," says Sampayo A.J., "that the Roman-Dutch law prevailed in Ceylon under the Dutch Government. But I think it is more correct to say that what so prevailed was not the whole body of Dutch laws including legislation due to the peculiar circumstances of time and place, but only what may be called the common law of Holland, or so much of it as was suitable to local needs and circumstances, while this was supplemented from time to time, as necessity arose, by local legislation. This is in accordance with the English principle that colonists carry with them only so much of the English law as is applicable to their own situation and the conditions of an infant Colony. . . . The English principle undoubtedly is that 'no Act of Parliament made after a Colony is planted

is construed to extend to it without express words showing the intention of the Legislature to be that it should.' I have no reason to think that the Dutch acted on a different principle; on the contrary, there are many indications that they acted on just the same principle. Now the law which absolutely prohibited marriages between persons who had previously committed adultery with each other was not a part of the common law of Holland, but was an innovation effected by a Placaat of the States of Holland dated July 18, 1674." And the learned judge found nothing to show that such Placaat was ever recognised or acted on in Ceylon.

Middleton J. took the same view, adding that even if the rule had ever been introduced into Ceylon, it was abrogated by disuse.

Moncrieff A.C.J., in an elaborate judgment, dissented from his colleagues on the ground mainly that the common law of Ceylon is the Roman-Dutch law as it prevailed in the Netherlands at the date of the Capitulation (1794). The point is of practical importance, and it will be interesting to see how it will be dealt with when it comes, as it shortly will, before the Judicial Committee.

Trial by Jury at Home and Abroad.—The Report by Sir E. Ruggles-Brise of the Proceedings at the International Penitentiary Congress at Buda Pesth touches many interesting topics, among them trial by jury in criminal cases. Does experience—this was one of the questions put to the Congress—point to the desirability of introducing reforms in this institution? The result was to show that the robust confidence felt by Englishmen in this Palladium of our liberties is far from being shared by continental nations. One of the reasons—as pointed out by Dr. Bernotak of Buda Pesth—is that on the Continent the institution is not, as with us, the native growth of the soil, but a political contrivance introduced for political ends and preached as a political doctrine by Montesquieu and the Encyclopædists with the object of extending the power of the people and consolidating popular liberty. This has reacted unfavourably on the attitude of jurymen abroad as "judges of a day." Another influence making against the success of the institution is the sympathy of the Latin races with crimes committed under the influence of passion. In Austria, for example, the number of acquittals by juries are nearly double those that occur in the ordinary Correctional Courts, and it is the same in Italy. Dr. Conti attributes to the influence of trial by jury the increase of serious crime in that country, the percentage of acquittals at assizes being considerably higher than at the tribunals of correction. This tendency is specially observable in the Romagna in cases of homicide and other crimes of passion. Juries in France, it is well known, cannot be trusted to deal with political or Press offences and display far too great leniency—as Englishmen think—to *crimes passionnels*. They are carried away by a dramatic situation. Irish juries have at times shown themselves quite equal to paralysing the law. Even in Teutonic Germany there seems to be a preference for mixed tribunals of professional and

lay persons who would deliberate together, both as to law and fact, and whose decision would be final. What M. Garçon, who represented the Société Générale des Prisons, fears in the "professional Courts" is a mechanical habit and their *effrayante rapidité*. The fidelity of the United States to trial by jury was eloquently vouched by Mr. Choate. To Americans, he said, trial by jury "will always remain the surest safeguard of their lives, their liberties, and their property."

Gold Coast Case Law.—The following is the text of the judgment of the Full Court, Brandford Griffith C.J., Smith and Purcell JJ., in the case of *Obobi and Wiapa* v. *Solomon and Akuffo*. The Editors are indebted for it to the Gold Coast Local Committee of the Society:

The plaintiffs, Wiapa and Obobi, are members of Nyago family at Tutu, a town in Akropong. The defendant Akuffo is the Omanhene of Akwapim, and he claims the land by right of his stool on behalf of all Akwapim: the other defendant, Solomon, claims by purchase from Akuffo as Omanhene. According to the plaintiff Wiapa, Nto, a predecessor of the Nyago family of Tutu, went to the land in question many years ago. At that time plaintiff admitted that the land belonged to no one. He further stated that he was told that the land was originally the property of the Akwamus, the former inhabitants of the present Akwapim country. Upon these admissions Sarbah, for the appellants, argued that if this land was no one's land and was within the Akwapim country it must have been attached to the Akwapim stool; and he enunciated the general principle that all unoccupied land within territory under a paramount stool belongs to such stool. This is, practically, the principle upon which the Courts of this Colony have proceeded from their inception; and this doctrine has served as a safeguard to the natives against possible Government claims. When Sir William Maxwell's Concession Bill was before the Government of this Colony, there was much discussion on the subject, and much stress was properly laid upon the fact that the Courts had always held that there was no unowned land in the Colony and that all unoccupied land was attached to the adjoining stools. This was indeed the foundation of the argument on behalf of the native chiefs against that Bill, and the Government recognised its force by withdrawing the Bill. We find the principle set forth in two memoranda which are to be found in Sarbah's *Fanti Laws*, one by my brother Smith and the other by the late Bruce Hindle, Attorney-General of the Colony.

Though the principle obtains that all unowned land under the authority of a paramount stool belongs to such stool, in practice this is much modified; at any rate in the eastern parts of the Colony. In these parts, each subordinate stool has attached to it large portions of land, apparently carved out of the territory originally belonging to the paramount stool; similarly families have large tracts of land carved out of the subordinate stool lands; and finally we get down to individuals with private ownership of particular parts of the family land; or private individuals may have part of stool land not being family land.

Any unoccupied land within the recognised boundaries of the subordinate stool land or the family land or private land would, of course, belong to the subordinate stool of the family or the private individual, as the case might be; but any unoccupied land not being a part of the land of a subordinate

stool, or a family, or a private person would be attached to the paramount stool. It is clear from the plaintiff's evidence that the land upon which Nto went was unowned and was therefore stool land. Whether at the time it was Akim or Akwapim stool land it is not necessary to enquire. In these circumstances it was necessary for the plaintiffs to prove that they came into lawful possession of this land. The fact of reasonably prolonged occupation would, of itself, have been strong evidence that their entry was lawful, but this they were not able to prove. All they could prove was intermittent occupation of one or two indefinite plots of land within the extensive area claimed. That is not sufficient even to entitle them to the particular plots of land formerly cultivated. Then it was suggested that hunting over the land gave them a right of ownership. We do not agree. Subject to the usual toll, the stool lands can freely be hunted over by all the subjects of the paramount stool, but in our opinion hunting can confer no right of ownership as between stool and subject. The plaintiffs further argued that they had sold lands there; that would not help their case, as they were selling not their own but stool land.

When Nto first went upon it, the land was clearly stool land, and the plaintiffs have never so occupied it as to enable the Court to say that it has been taken out of that category. In our opinion, judgment should have been given in the Court below for the defendants. We think that the judgment of the Court below should be reversed and that judgment should be entered for the appellants, with costs here and below, except any costs with respect to the plea of *res judicata* in the Court below, which should be awarded to the plaintiffs.

Dr. Oppenheim on the International Spirit.—Dr. Oppenheim's volume on the laws of *War and Neutrality*, the sequel to his volume on the laws of peace, is one of the few treatises which inspire a hope that one day the present sharp distinction between English legal literature and continental will come to an end. To lay down principles and then to work out their applications, to get firm hold of the *Begriff* and to determine all individual questions in accordance therewith, seems to one school the only rational course; any other is denounced as crude empiricism. Another class of writers, for the most part English and American, reject this procedure, and will accept only rules which sum up a collection of precedents. Surely an *entente cordiale* in this matter is possible. Certainly Dr. Oppenheim's volume prepares the way for it. "I have tried to write this volume," he remarks, "in a truly international spirit, neither taking any one nation's part nor denouncing another"—a policy very different from that of many writers, and some in recent times, who have with misplaced ingenuity made treatises on international law the means of expressing international hatred, prejudices, and uncharitableness.

Protection within the United States.—It is not generally known that a considerable number of States in America, especially in the west and south, have set on foot a system of indirect protection for native industries. A series of statutes has been passed by Alabama, California, Kentucky, Louisiana, Mississippi, and other States exempting cotton and woollen manufactures, beet sugar plant, or manufacturing enterprises generally from

local taxation for periods of three to fifteen years. In an article in *The Quarterly Journal of Economics* Mr. John Burton Phillips enumerates no fewer than sixteen States which have adopted such legislation. The giving of bounties by States was declared unconstitutional. It remains to be seen whether these laws, which give the substance of protection, will stand this test.

Hogg's "Ownership and Incumbrance of Registered Land."—This is a book which well illustrates the value of the comparative method. Mr. Hogg has a thorough acquaintance with the working of the Torrens system of land registration in Australia, as his great treatise thereon testifies, and in this new book he brings his special knowledge to bear with excellent effect on our English system as represented by the Land Transfer Acts of 1875 and 1897. The Torrens system, as Mr. Hogg points out, is based neither on allodial ownership, like the South African, nor on Roman law, but on purely English feudal land law, and is thus particularly valuable as a source of workable analogies for the new English system: it affords an example of registration of title imposed on purely English law. For instance, indefeasibility of title—with certain stated exceptions—provisions for enabling persons interested to protect their interests by appropriate entries, and the creation of an insurance fund to furnish compensation for unavoidable losses—these three features are common to both the English and the Australian systems, but there is an important difference in the two systems as to the effect of notice. Under the English system, as it has been said, "notice is fraud." Under the Australian system, mere notice is not itself fraud. "Fraud" means actual fraud, not the constructive fraud of Equity Courts. Here the Australian analogy might well serve us as a guide, for this English doctrine of constructive notice—as the Reports of the Commissions of 1830, 1850, and 1857 all agree—is largely to blame for the complexity and expense which are the reproach of conveyancing.

Mr. Hogg's method is, not to annotate the sections of the Acts, but to treat his subject in a series of chapters—the Origin and Objects of the System, the Placing Land on the Register, the Estates and Interests in Registered Land, Mortgages, Settlements, Indemnity, and so on, with the Acts and Rules in an appendix. This makes greatly for intelligibility.

Editorial Note.—The Editors regret the delay which has occurred—owing to unavoidable difficulties—in the issue of the present number of the Journal. In future the number containing the Review of Legislation will appear on December 15 in each year following the year treated. The Review of Legislation for 1905 will be issued in the December of the present year.

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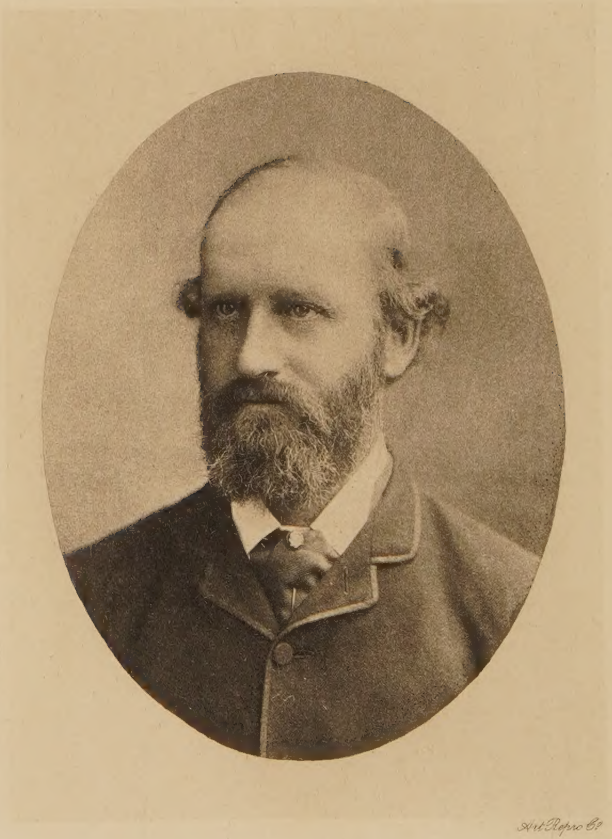

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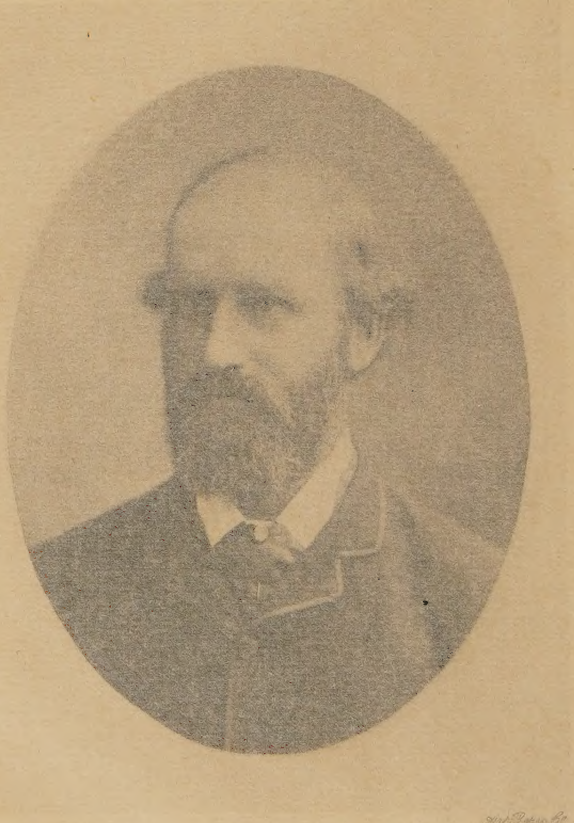

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